

ARTICLE RECORDING OF
CONFESSION U/S 164
C.r.P.C

PAPER PRESENTED BY

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Confession u/sec.164 Cr.P.C

The meaning for the word 'confession' stated in the Oxford Dictionary:

1. A statement admitting something that he is guilty of crime.
2. A statement admitting something that you are ashamed (or) embarrassed about.

Confession and its relevancy in the field of Indian Laws

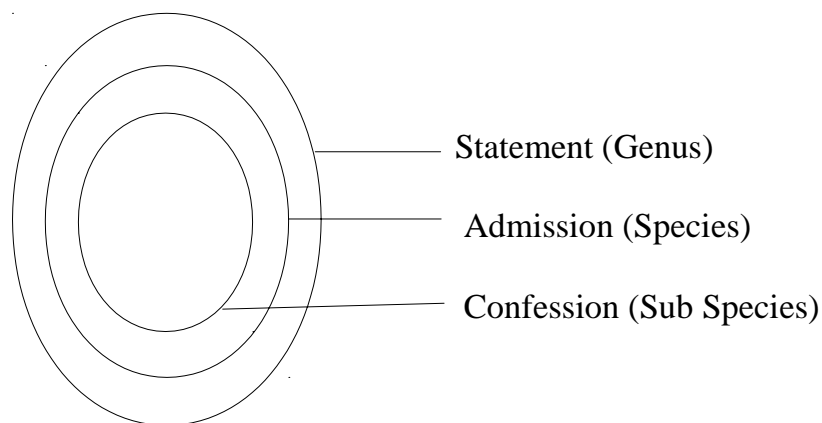
The expression “confession” has been defined neither in ' Indian Evidence Act 1872' nor even in “Criminal Procedure Code 1973”.

Confession is not an evidence as defined u/s.3 of Indian Evidence Act. It cannot be made the foundation of a conviction and can only be used in support of other evidence.

The said expression is defined by James Stephan, who could be called the founding father of the Indian Evidence Act in his “Digest of the Law of Evidence” in Art.22 “ as an admission made at any time by a person charged with crime stating (or) suggesting the inference that he has committal the crime”.

For our better understanding, we can have the map as follows.

Genus	-	Statement
Species	-	Admission
Sub Species	-	Confession



- * All confessions are statements. But all statements are not confessions.
- * All confessions are admissions. But all admissions are not confessions.

- * While we make search regarding the expression “ Confession”, it travels through the Sec. 21, 24 to 30, 80, 91 of Indian Evidence Act, Sec.162, 163, 164, 281, 316 & 463 Cr.P.C. and Art. 20(3) & 21 of Indian Constitution and also Rule 10 of The Criminal Rules of Practice, 2019.
- * The statement recorded from a witness u/s.164 Cr.P.C and the statement recorded from an accused u/s.164 Cr.P.C are not one and the same, except they are appearing in the same section.
- * The acid test which distinguishes a confession from an admission is that where conviction can be based on the statement alone, it is confession and where some supplementary evidence needed to authorize a conviction, then it is admission. This was observed in **Ram Singh Vs. State on 13th May 1958 AIR 1959 All 518.**
- * Confession can be classified as
 1. Judicial confession.
 2. Extra Judicial Confession.
 3. Retracted confession.
- * Judicial confession are those which are made before a Magistrate or in Court in the due course of legal proceedings. It has been defined as “Plea of guilty on arrangement (made before a court) it made freely by a person in a fit state of mind”.

Constitutional aspect and the confession:

- * Art.20(3) of The Indian Constitution :

No person accused of any offence shall be compelled to be a witness against himself
- * Art.21 of The Indian Constitution

Protection of life and personal liberty, no person shall be deprived of his life or personal liberty except according to procedure established by law

1. Period for recording Confession:

- * In the course of investigation, which is under the Chapter XII of Cr.P.C. or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial.

- * The total process of recording confession has come to an end in the course of Investigation under the Chapter XII of Cr.P.C. or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial. Under these circumstances Recording of statement u/s.164 Cr.P.C after filing of charge sheet, can not be said that the investigation of the case is still pending.

2. Who can file application:

- * Investigating Officer and

- * Accused.

An accused himself can appear before the Magistrate for the purpose of recording confession. It is not necessary that he should be produced by Police only for recording confessions.

3. Before whom application can be filed:

- * If the application is filed by Investigating Officer, it has to file before the CJM/CMM. After that the said officer has to nominate a Judicial Officer with in his jurisdiction other than the Magistrate having jurisdiction over the case.

- * When the accused volunteers to make a confession, he may make a request either orally or in writing to the Magistrate having jurisdiction over the case and on such request, the said Magistrate shall record the confession.

State of Rajasthan Vs. Darbarra Singh 2000 Cr.L.J. 2906 (2914) Reij. : 2000(z) WLN 685.

“ The application for recording confession need not be signed by the accused”.

4. Presence of the counsel for the accused:

- * If at all necessary, any confession may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence.

i). State of Assam Vs. Rabhindra Nath Guha 1982 CrL.J 216.

“ Recording of confession without providing the indigent accused with legal aid held to be violative of Art.21 of the Constitution ”.

ii). A bed Ali Jamader Vs. State. 1988 CrL.J.354.

“ Right to be informed to consult of lawyer. No prejudice what so ever was caused to the accused for non-communication of this information (or) his right to consult to him ” .

5. Language:

- * The Magistrate shall questioning the person making it in the language known to him, to find out the reason for believing that it is being made voluntarily, so as to enable him to give the requisite certificate under sub-section 4 of Sec.164 of Cr.P.C.
- * After recording the statement of the accused, the same shall be read out and explained to him in the language known to him and the fact of having read the statement to the accused and the accused having admitted its correctness shall be recorded.

i). Lonimhan Das Vs. Union Territory of Manipur 1974 CrL.L.J. 1186

“ A confessional statement is to be recorded in accordance with the provisions of Section 164 of the Code of Criminal Procedure. Sub-Section (2) of Section 164, Criminal Procedure Code inter alia, provides that confessions shall be recorded and signed in the manner provided in Section 364 and the statement shall be recorded in full, in the language in which the accused is examined, or, if that is not practicable, in the language of the Court or in English and such record shall be shown or read to him, or if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

ii). Asstt. Collector S.C. Fernandes, Central Exercise (1982) 3SCC 512.

“Where the statement is recorded in the language with which the accused is not conversant, but is read over, explained and interpreted to him in the language known to him”.

6. Non-Administration of Oath:

- * Oath should not be administered to the accused before recording his confession statement.

Philips Vs State of Karnataka 1980 Cr.L.J. 171.

“ There is no provision for administering oath to an accused who is making a confessional statement before a Magistrate. No question of administering oath arises, and in fact it oath is administering it will be contrary to the provision of Sec.281 Cr.P.C”. -

Jayanthi Bhattacharya Vs. State of West Bengal 2006 Cr.L.J.3414(3422) DB. &

Ram Singh Vs. State of Uttaranchal. 2008(z) Crices 417.

“ The Magistrate cannot administer oath to the accused before recording his confessional statement. A confession made on oath by the accused is inadmissible in evidence in view of Art.20(3) of the constitution and Sec.281 Cr.P.C”.

7. Find out the voluntary nature

- * A confession under the section should be voluntary and uninfluenced by any external factors.
- * The Magistrate shall ensure that during the questioning of the accused and the recording of his statement, there are no police officers in the vicinity.
- * Before recording confession, the Magistrate shall explain to the person making it that he is not bound to make a confession and if he do so, it may be used as evidence as against him. This is **sine qua** non for recording confession.
- * The Magistrate ought to inform the accused that he is the Judicial Officer competent to record the confession and that a refusal to confess will not expose him to any risk at all.
- * Though the accused had been remanded to judicial lock-up, the investigating police as access there to which makes the confession not a voluntary one.

- * During the preliminary examination. the question put forth by the Magistrate as well as the answer given by the accused shall be reduced to writing in his own words, as far as possible.
- * Magistrate is prohibited from recording confession, until he satisfied himself by questioning the person making it that it is voluntary. Deviation on this aspect, not only made the confession as in admissible one, but also, it could not be used for the Sec.21 and 29 of Indian Evidence Act. The said defect can't be cured by examining the Magistrate.

i) Bhukin Vs. King Emperor 35 MPLC: ILR 1948 Nag.147

“ ... that a magistrate recording a confession ought to question the accused merely with a view to discovering whether the proposed confession is voluntarily or on account of any inducement or threat and the Magistrate should not question the prisoner so as to get answers from him regarding the occurrence which would be inculpatory. The prisoner should be allowed to state whatever he wants and the confession should be recorded in his own words”.

ii) Sarwan Singh Vs. State of Punjab, AIR 1957 SC 637.

“ the questions intended to be put under sub-s.(3) of 164 should not be allowed to become a matter of a mere mechanical enquiry”.

“ The whole object of putting questions to an accused person who offers is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise having, reference to the charge against the accused person as mentioned in Sec.24 of Indian Evidence Act”.

“ That in ordinary circumstance an interval of twenty four hours may be regular as reasonable time for reflection is not to be taken as an absolute rule and as laying down that, Whatever the circumstances, a confession recording without allowing time for reflection is to be rejected as a confession that is not voluntary”.

“ The act of recording confession u/s.164 is a Solemn Act and in discharging his duties, under that section, the Magistrate must take care to see that the requirements of law must be fully satisfied”.

iii). Kehar Singh Vs. State 1988 SC 1883(Delhi Admin.)

“ Where the confessional statement neither points out the warning against the making of the confession, nor does it show that the confession was made voluntarily not sufficient time was given to the person making the confession to have a cool reflection, the confessional statement is liable to be rejected”.

iv). Mahabir Singh Vs. State of Haryana AIR 2001 SC 2503.

“ As the confession recorded by PW-2. cannot be brought under [Section 164](#) of the Code it is an idle exercise to consider whether it was voluntary or true. We may again point out, PW-2 has not stated that before taking down the confession he explained to Ranbir Singh that he was not bound to make the confession, and that if he did so, such confession might be used as evidence against him. This is sine qua non for recording a confession. Further a Magistrate is forbidden from recording any such confession until he gets satisfaction that the person is going to make a voluntary confession. There is nothing in the evidence of PW-2 that he had adopted such precaution. For all those reasons we keep that document out of the ken of consideration in this case”.

v). State of Rajasthan Vs. Rajaram (2003) 8SCC 80.

“ A confession Judicial (or) extra judicial it found to have been voluntarily made can for on the basis of conviction of the accused”.

vi). State of M.P. Vs Dayaram Harssraj, AIR 1981 SC 2007

“Wherein the Magistrate while recording the confession elicited answers of questioning the accused, such a confession cannot be considered voluntary in nature”.

vii). Dhulaswar Beharaj Vs. State 1982 CrL.J.2346 (Orissa-DB),

It was observed that “ Accused can be convicted solely upon his own confession even if retracted, if the court believes it to be true and voluntarily made”.

8. The accused not desire to give confession, during the preliminary examination:

- * The Magistrate shall not authorize the detention of the said person in police custody, whom states before the Magistrate as he is not willing to make confession.

9. If suppose, the accused is desire to give confession during the preliminary examination, the procedures to be followed:

- * If accused person, after being so questioned, express his desire to make a statement, the Magistrate shall give him reasonable time for reflection which shall not ordinarily be not less than 24 hours.
- * During the time for reflection (Cooling Time), the accused to be in the Judicial Custody.
- * Though the accused had been remanded to Judicial Lock-up, the Investigating Police as assess there to, it was held that the confession is not a voluntary one.

Henry West Muller Vs. State of Assam, AIR 1985 SC 823 = (1985) 3SCC 291

"A confession statement cannot be rejected nearly because only three hours time was given for reflection."

10. After the completion of reflection (cooling time):

- * When the accused person is produced or appears before the Magistrate after the expiry of the period so granted, he shall again warn the accused that he is not bound to make any statement and that any statement made by him may be used against him during the trial of the case.
- * If the accused still desires to make the statement and the Magistrate had reason to believe that he is doing so voluntarily, the Magistrate shall record the statement during the Court hours, save for exceptional reasons to be recored in writing, in the manner provided in Secc.281 of Cr.P.C, and shall be signed by the person making the confession.
- * Recording confession in jail is in proper.
- * After recording the statement of the accused, the same shall be read out and explained to him in the language known to him and the fact of having read the statement to the accused and the accused having admitted its correctness shall be recorded.
- * Thereafter the Magistrate shall make the memorandum at the foot of such record to the effect as stated in Sub. Sec.4 of Sec.164 of Cr.P.C.

Baliram singh (1941) Nag.506.

“ Where the Magistrate has not certified that the confession is voluntary, evidence is admissible to prove that the confession was voluntarily made and represents what was said by the accused”.

Tilak Vs. Sate of M.P. 1978 CrI.L.J.1112.

The accused should be left to himself to state whatever he likes and it is not the business of the Magistrate to lead him (or) to examine him like a witness.

11. After completion of the proceedings of confession:

- * A Confessing accused must invariably be sent to the Judicial lockup as soon as possible after confession, and on no account to be returned to police custody. If at all the police wants him, they have to file a separate application.

12. Relevant parameters, while recording the confession under Sec.164 of Cr.P.C

- * The power to record confession is given only to Magistrates. Strict and rigorous instruction have been laid down in Sec.164 Cr.P.C. to be complied.
- * Sec. 316 of Cr.P.C No influence to be used to induce disclosure.

i). Gurudaru Praja Vs. the King AIR 1949 Orissa 67.

“ Full and adequate compliance of the provision u/s. 164 is imperative. Non compliance goes to the root of the magistrate's jurisdiction to record & reduces the statement recorded by his as nullity” .

ii). Shivappa Vs. State of Karnataka AIR1995 SC 980.

“ Full and adequate compliance not merely in form but in essence with the provisions of [Section 164 CrPC](#) and the rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

iii). Kashmira Singh Vs. State of M.P. 1952 CrI.L.J. 839 (SC)

A confession cannot be made the foundation of a conviction and can only be used in “support of other evidence”.

iv). Kuttikrishnan Vs. State 1986(z) Crices 494, 499 (Kerala)

“ If there had been a genuine confessional statement made by the accused, surely the prosecution should have made use of such statement as their key evidence”.

v. Mazahar Ali Vs. State 1976 CrI.J.1629 (J&K-DB),

To base a conviction on retracted confession, the court must be assured by corroborative evidence.

Guidelines given by the Hon'ble High Court in Murugasamy Vs. State – 2017 (4) MLJ (CRL) 129, (2017) 5 CTC 561:

Our experience shows that the Trial Courts are in a state of oblivion as to the two provisions extracted above and as a matter of routine, the Magistrate recording the confession of an accused is summoned as a witness. Therefore, a Magistrate who had recorded the confession statement of an accused can be summoned as a witness, only if it is found by the Trial Court that there has been an infraction of Section 164 or Section 281 of the Code and not otherwise. The Trial Courts should bear in mind this salutary aspect before unnecessarily summoning a judicial officer and putting him in the witness box at the cost of judicial time.

(Para53).

Since there may be a possibility of a Magistrate recording the confession of an accused under Section 164 Cr.P.C., 1973 being examined as a witness for infraction of section 164 or 281 Cr.P.C., 1973 we are of the view that it will not be desirable for the jurisdictional Magistrate to record the confession of an accused under Section 164(4) Cr.P.C., 1973. This would apply to the Special Courts as well. In other words, though a Special Judge has the power to record the confession statement of an accused, yet, demands of propriety require that he should refrain from recording the confession of an accused in order to avoid the embarrassment of being examined as a witness in that case. We are also aware that the Magistrates come under the administrative control of the CMM/CJM and not under the Special Judges. Therefore, in order to save time, whenever the investigating agency wants the statement of an accused to be recorded under Section 164 Cr.P.C., 1973 it should file an application before the CMM/CJM for nominating a Magistrate other than the jurisdictional Magistrate for the purpose of recording such a statement. The investigating agency need not approach the Special Court and obtain a direction from the Special Court to the CMM/CJM for this purposed. (Para55)

Thus, the upshot of the aforesaid discussion with regard to the confession statement of an accused recorded under Section 164 Cr.P.C., 1973 shows that it is done not only in the aid of investigation but also to be used as a substantive piece of evidence during trial. Therefore, it is imperative that the Investigating Officer is immediately supplied with a copy of the confession statement. (Para 56)

To summarise:

- *The investigating Officer shall make an application before the CMM/CJM for nominating a Magistrate, other than the jurisdictional Magistrate, to record the confession statement of an accused.*
- *After recording the confession statement of an accused, the recording Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies.*
- *The confession statement, in original, shall be sent in a sealed cover to the jurisdictional Magistrate or Court, as the case may be, through a special messenger or by registered post with acknowledgment due.*
- *One certified copy of the confession statement shall be immediately furnished to the Investigating Officer, free of cost, with a specific direction to him, to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed.*
- *The other certified photocopy of the confession statement shall be kept in sealed cover in the safe custody of the recording Magistrate.*

The recent observation of Hon'ble Apex Court in the appeal before the said Forum in Manoharan V. State by Inspector of Police, Variety Hall Road Police Station, Coimbatore on 1st August, 2019

“ 47. Confession of Manoharan:

L.Sathyamoorthy, P.W.28, Judicial Magistrate No.1, Coimbatore examined Manoharan on 19.11.2010 and extensively questioned him and made a roving enquiry in order to find out if he was voluntarily giving confession statement. The questions were asked in Tamil and the answers were also recorded in Tamil by the learned Judicial Magistrate. 17 questions were put to him on 19.11.10. Thereafter, he was sent back to the jail for reflection and was directed to be produced the next day again

i.e. on 20.11.2010. On 20.11.2010, the learned Judicial Magistrate has put nine questions to him. He has even told Manoharan that he need not have to give any confession. We also went through the preliminary examination done by the Judicial Magistrate on 19.11.2010 and 20.11.2010 and we find that the Judicial Magistrate has

not mechanically acted, but has sincerely endeavoured to make the accused be aware of his rights and also the fallout of giving a confession. Sufficient reflection time was also given by the learned Judicial Magistrate and thereafter, he has proceeded to record his confession.” It then set out some of the relevant questions that were asked by the said Magistrate to the Appellant as follows:-

“49. We gave our anxious consideration to the arguments advanced by the learned senior counsel and therefore, we scrutinized carefully the questions put by the Judicial Magistrate on 19.11.2010 and 20.11.2010.

The learned Judicial Magistrate has put 17 questions on 19.11.2010. Some relevant questions run thus (English Translation):

Question No.5 : Do you know that I am a Judicial Magistrate No.1, Coimbatore?

Ans :Yes. I know that this is Judicial Magistrate Court, but only from you, I know the number.

Question No.9 :Do you know as to why you have come here?

Ans : I want to give a true statement to the Judicial Magistrate. That is why I have come here.

Question No.10 :Did police torture to give statement in any manner? Ans :No.

Nothing like that has happened.

Question No.11 :Did the Police or anyone tell you that if you give confession statement, it will be beneficial to you and if you do not give confession statement, they will do something to you?

Ans :No one has said like that to me.

Question No.12 : Are you aware that you have no duty to give confession? Ans :I have

understood it from what you told now.

Question No.15 :I am asking you once again this question, Has anybody tortured you or induced you to give confession?

Ans :No. Nobody has tortured me.

50. Again on 20.11.2012, some questions were asked to Manoharan in order to find out whether he was voluntarily willing to give confession. Only thereafter, the learned Judicial Magistrate has recorded the confession." Since the confession was later partially retracted, the High Court dealt with this aspect of the matter as follows:-

"61. In this case confession was recorded on 20.11.2010 and it was retracted only on 13.08.2012 during the cross examination of Mr. L.S. Sathiyamoorthy (P.W.28). When Manoharan was put the following question under [Section 313](#) Cr.P.C. viz. "That P.W.28 Mr.L.S. Sathiamoorthy in his evidence has stated that he was Judicial Magistrate in Coimbatore and that he examined Manoharan on 19.11.2010 in the Court for the purpose of recording the confession statement and for that he had taken appropriate steps and had also given 24 hours time to reflect and that on 20.11.2010, he recorded the confession statement running to 17 pages in the appropriate manner. That confession statement is Ex.P.18. What do you say?" The answer given by Manoharan is, "Correct". This singular answer of Manoharan demolishes the defence argument that the Magistrate had not followed the proper procedure for ascertaining whether the confession was voluntary.

62. xxx xxx xxx

63. We have already extracted the statement of Manoharan under [Section 313](#)Cr.P.C. with regard to the evidence of Mr. L.S. Sathiamoorthy P.W.28. This statement under [Section 313](#)Cr.P.C. was recorded on 04.09.2012, after the evidence, whereas Mr. L.S. Sathiamoorthy was cross examined on 13.08.2012. In other words on 13.08.2012, when P.W.28 was cross examined by the counsel, the confession was retracted. But in the 313 examination recorded subsequently on 04.09.2012, Manoharan had admitted that the confession was properly recorded. Manoharan was examined by us u/s 313 [Cr.P.C.](#) on 27.02.2014 with regard to the inculpatory portion in his confession statements. At that time he stated that Police forced him to give the confession.

64. We may now mention about the letter dated 25.07.2012 written by Manoharan from jail addressed to the Sessions Judge which he wanted to be treated as his statement under [Section 313](#) Cr.P.C.'73. In that letter he has stated that Police made him to confess to the crime and had it videographed in the Police Station. Thereafter they played the videograph to the Magistrate and the Magistrate merely wrote down the confession statement by seeing the videograph. In other words, the Magistrate did not record any statement from him directly but copied a statement from the videograph. This is given as a reason for retraction. Such a suggestion was not even put to Mr.Sathiamurthi, the Magistrate when he was cross examined. Applying the test in Subramania Goundan's case cited above, we cannot but simply reject the very

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retraction.” The High Court then held that the confessional statement given by the Appellant was voluntarily made and the retraction was clearly an afterthought”.

The recent observation of Hon'ble Apex Court in the Review Petition before the said Forum in Manoharan V.State by Inspector of Police, Variety Hall Road Police Station, Coimbatore on 7th November, 2019

“ 25. The objective behind such a provision has been explored by this Court in various decisions wherein it has been noted that provisions permitting use of confessional statements in criminal trials were statutorily included as an acknowledgement of the possibility that in certain circumstances an accused may voluntarily confess to his offence(s).7 (1971) 3 SCC 950 Page 14

26. From a chronological analysis of the confessional statement of Petitioner dated 20.11.2010 (Ex.P.18) as well as the preliminary examination held on 19.11.2010, it is apparent that the learned Magistrate - S.S. Sathiamoorthy (PW-28) duly complied with all procedural requirements for recording of a confessional statement and affirmatively satisfied himself of the voluntariness of the petitioner's confession:

a. During preliminary examination, the petitioner informed the Magistrate that he was brought from Central Jail, Coimbatore on 19.11.2010, hence abridging the possibility of any coercion or influence by the police. Further, a perusal of the record shows that petitioner was last in police custody only on 11.11.2010 and hence there is no doubt that he had been in judicial custody for some time prior to giving a confessional statement. Hence per [Abdul Razak Murlaza Dafadar v. State of Maharashtra](#) 8 it can be inferred that he was not under the influence of the investigating agency.

b. In reply to Question 8 during preliminary examination on 19.11.2010, when asked by the Magistrate whether someone tortured him, the petitioner does say that he was beaten by the police. However, when asked whether the “police tortured and compel you to give statement like this”, the petitioner denied any such torture or compulsion.

Similarly, when the Magistrate asked him whether he was told some sweet words such as “the confession statement will be beneficial or 8 AIR 1970 SC 283. where you threatened by police or by anybody else that if statement was not given”, the petitioner specifically denied the same. He also acknowledged the fact that he was not under compulsion to give a confession statement and that he was aware of the fact that such statement could be used against him. Further, when re-questioned by the Magistrate if the petitioner was tortured, he answered in the negative. Hence, not only was the petitioner inconsistent in his claims, but further it is evident that the alleged physical assault by the police, if at all, would have been committed weeks before the confession. Vague and passing claims of police assault, supposedly committed far before the confessional date, cannot be a ground for holding the confession as coerced.

c. After preliminary questioning on 19.11.2010, the petitioner was entrusted to the Prison Warden and sent back to judicial custody for reflection "after duly informing him that he was not under obligation to give confessional statement." The petitioner was re-produced before the Magistrate on the next day at 2PM and was again given an opportunity to change his mind and not confess. The Magistrate once more satisfied himself of the voluntariness of the petitioner and the absence of any police influence. Hence, it is clear that an adequate opportunity to recant was provided and the Magistrate ensured that any possible lingering effects of alleged beatings or psychological stress post encounter of co-accused, would have been mitigated. It is also apparent that the Magistrate duly informed the petitioner about the repercussions of his confessional statement, and made no false assurance of it helping his case, as had been made in **State of Assam v. Rabindra Nath Guha 9**, which has erroneously been relied upon by Mr. Luthra.

d. The statement once recorded, was thereafter read out to the petitioner who signed it to be correct. The Magistrate signed the statement at 4:30PM on 20.11.2010, and afterwards sent the petitioner to judicial custody. The Magistrate thus was fully conscious of his statutory obligation and factually ensured that the petitioner was not sent to police custody post the confessional statement. It is further clear that the petitioner was kept in judicial custody for almost twenty months after the confession, over the course of which there was no likelihood of him being entrusted to police, and still no protest or attempt to retract the confession was made by him. e. The fact that the application to record the petitioner's statement was moved by the IO is inconsequential, as the petitioner was neither in police custody nor, as acknowledged by him, the police officials interacted with him during judicial custody. It is thus far-fetched to use the fact that police put forth the request for recording of confession to suggest that the confession was involuntary or secured at the behest of police.⁹ 1982 Cri LJ 216.

7. Further, it is essential to note that the petitioner failed to put forth any protest against the confessional statement despite having multiple opportunities during the course of trial. This Court has held earlier in **Shankaria v. State of Rajasthan¹⁰** that retractions must be made by the accused as soon as possible, otherwise there would be a strong presumption of voluntariness in the confession.

28 The confession, in the present case, was not challenged during stage of framing of charge or over the course of examination of forty-seven prosecution witnesses, but instead only partly disputed through a letter written in secret just before petitioner's examination under Section 313 of the Code. It is thus evident that such retraction at the fag-end of the trial, was not natural but rather meticulously formulated, perhaps as a part of defence strategy. Hence, there remains no doubt about the voluntariness of the confession of 20.11.2010 or it being unaffected by subsequent retraction.

29. That apart, even if the confession dated 20.11.2010 were to be treated as being retracted vide letter dated 25.07.2012 (as adopted during examination under Section 313 of the Code), still the original confession can be relied upon. Coupled with corroborating evidence, conviction can also be secured on the strength of such confession. The rule regarding use of such retracted confessions was noted by this Court in *Subramania Goundan v. 10 (1978) 3 SCC 435*.

State of Madras¹¹ as well as by a four-Judge Bench of this Court in ***Pyare Lal Bhargava v. State of Rajasthan***¹², holding that:

“A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only a rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars.”

30. Still further, it is clear that even in the retraction statement, the petitioner has made substantial admissions which read together with prosecution evidence, are sufficient to convict him. Through the letter dated 25.07.2012, the Petitioner merely restates his confession with certain omissions and a few denials as compared to his earlier statement. Although he agrees to be at the place of the occurrence along with the now deceased Mohanakrishnan throughout the incident, instead of admitting an equal role in commission of rape and murder, he portrays himself to be a mere helpless bystander. The petitioner has attempted to justify his retraction by stating that he had told the truth to the Magistrate but his statement was not read out to him and hence the Magistrate's affirmation under Section 164 of the Code is incorrect. 11 AIR 1958 SC 66. 12 AIR 1963 SC 1094.

31. A comparison of the retraction with the confession dated 20.11.2010 further shows that it is merely an improvement. The Petitioner has admitted to all the general circumstances of the incident, i.e. having been present at the scene of all crimes, being friend of the co-accused and of the offences as claimed by the prosecution to have occurred. However, he merely contends that the crimes were committed by the co-accused and not by the Petitioner himself. Regardless thereto, there are sufficient inculpatory admissions in the letter dated 25.07.2012 to place a strong burden of proof on the Petitioner under Section 106 of the IEA” .

Sec. 21 of Indian Evidence Act

21. Proof of admissions against persons making them, and by or on their behalf.—

Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Sec. 24 of Indian Evidence Act

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 reference 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 proceedings against him.

Section 25 in The Indian Evidence Act, 1872 :

Confession to police officer not to be proved.—No confession made to a police officer¹, shall be proved as against a person accused of any offence.—No confession made to a police officer¹, shall be proved as against a person accused of any offence."

Section 26 in The Indian Evidence Act, 1872

Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate¹, shall be proved as against such person. [Explanation.—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George³[***] or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)].

Section 27 in The Indian Evidence Act, 1872

How much of information received from accused may be proved.—Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Section 28 in The Indian Evidence Act, 1872

Confession made after removal of impression caused by inducement, threat or promise relevant.—If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Section 29 in The Indian Evidence Act, 1872

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

Section 30 in The Indian Evidence Act, 1872

Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. 1[Explanation. —“Offence”, as used in this section, includes the abetment of, or attempt to commit the offence.]

Section 80 in The Indian Evidence Act, 1872

Presumption as to documents produced as record of evidence.—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume— that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Section 91 in The Indian Evidence Act, 1872

Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents.—When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence¹ shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.—When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence² shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained."

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills 2[admitted to probate in 3[India]] may be proved by the probate. Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation. 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Rule 10 of Criminal Rules of Practice:-

Recording of Confession.— (1) The Investigating Officer, when he has reason to believe that the accused is likely to confess to his guilt, may make a report to the Chief Judicial Magistrate of the District or the Chief Metropolitan Magistrate of the City, as the case may be, and the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall, thereafter, nominate a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within his jurisdiction, other than the Magistrate having jurisdiction over the case, for the purpose of recording the confession of the accused.

(2) When the accused volunteers to make a confession, he may make a request either orally or in writing to the Magistrate having jurisdiction over the case and on such request, the said Magistrate shall record the confession.

(3) (a) Before recording a confession statement, the Magistrate shall explain to the accused that he is before a Magistrate; that he is under no obligation at all to make any statement; that he is free to make a statement or refrain from making any statement; that it is not intended to take him as an approver and that anything said by him will be taken down and thereafter, may be used as evidence against him.

(b) A Magistrate may also put such questions as he may consider necessary to assure himself that the accused is making the statement voluntarily.

(c) The questions put forth by the Magistrate as well as the answers given by the accused shall be reduced to writing.

(4) If the accused person, after being so questioned, expresses a desire to make a statement, the Magistrate shall give him, reasonable time for reflection which shall ordinarily be not less than 24 hours.

(5) When the accused person is produced or appears before the Magistrate after the expiry of the period so granted, he shall again warn the accused that he is not bound to make any statement and that any statement made by him may be used against him during the trial of the case.

(6) If the accused still desires to make a statement and the Magistrate has reason to believe that he is doing so voluntarily, the Magistrate shall record the statement of the accused.

(7) The Magistrate shall record the statement of the accused in Court and during Court hours, save for exceptional reasons to be recorded in writing.

(8) The Magistrate shall ensure that during the questioning of the accused and the recording of his statement, there are no police officers in the vicinity.

(9) The accused person shall be questioned in the language known to him and the answer given by him shall be recorded in his own words, as far as possible.

(10) After recording the statement of the accused, the same shall be read out and explained to him in the language known to him and the fact of having read the statement to the accused and the accused having admitted its correctness shall be recorded.

(11) The Magistrate shall thereafter append a certificate as required by sub-section (4) of section 164 of the Code.

(12) After recording the confession statement of an accused, the Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies. The confession statement in original shall be sent in a sealed cover to the jurisdictional Court through a special messenger or by Registered Post with Acknowledgment Due. One certified copy of the confession statement shall be immediately furnished to the Investigating Officer free of cost with a specific direction to use it only for the purpose of investigation and not to make its contents public until the investigation is completed and final report filed. The other certified copy of the confession statement shall be kept in a sealed cover in safe custody of the Magistrate.

(13) After the completion of the process, the Magistrate shall make necessary entries in Judicial Form No.13.

Section 162 in The Code Of Criminal Procedure, 1973

Statements to police not to be signed: Use of statements in evidence.

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or

record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re- examination of such witness, but for the purpose only of explaining any matter referred to in his cross- examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

Section 163 in The Code Of Criminal Procedure, 1973

No inducement to be offered.

(1) No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872 (1 of 1872).

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will: Provided that nothing in this sub- section shall affect the provisions of sub- section (4) of section 164.

Section 164 in The Code Of Criminal Procedure, 1973

Recording of confessions and statements.

(1) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial: Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, 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 as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:-" I have explained to (name) 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.

(Signed) A. B. Magistrate".

(5) Any statement (other than a confession) made under sub- section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

Section 281 in The Code Of Criminal Procedure, 1973

281. Record of examination of accused.

(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the Court and such memorandum shall be signed by the Magistrate and shall form part of the record.

(2) Whenever the accused is examined by any Magistrate other than a Metropolitan Magistrate, or by a Court of Session, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full by the presiding Judge or Magistrate himself or where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence by an officer of the Court appointed by him in this behalf.

(3) The record shall, if practicable, be in the language in which the accused is examined or, if that is not practicable, in the language of the Court.

(4) The record shall be shown or read to the accused, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(5) It shall thereafter be signed by the accused and by the Magistrate or presiding Judge, who shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.

(6) Nothing in this section shall be deemed to apply to the examination of an accused person in the course of a summary trial.

Section 316 in The Code Of Criminal Procedure, 1973

316. No influence to be used to induce disclosure. Except as provided in sections 306 and 307, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Section 463 in The Code Of Criminal Procedure, 1973

463. Non- compliance with provisions of section 164 or section 281.

(1) 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 281, is tendered, 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 may, notwithstanding anything contained in section 91 of the Indian Evidence Act, 1872 (1 of 1872), take evidence in regard to such non- compliance, and may, if satisfied that such non- compliance has not in- jured the accused in his defence on the merits and that he duly made the statement recorded, admit such statement.

(2) The provisions of this section apply to Courts of appeal, reference and revision.
