



## FACULTY OF JURIDICAL SCIENCES

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# Lecture-17



## **CONFESSION BY CO-ACCUSED ( Sec.30)**

Section 30 of Indian evidence Act provided that 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 makes such confession."

When more than one person is jointly tried for the same offence, then in such cases the confession of one of the accused if found to be admissible as evidence, must be taken as a confession against all other accused persons who are being jointly tried.

Where the confession of one accused is accepted as evidence by the court, the other accused persons in the case don't have opportunity to cross-examine such accused, and hence, this is entirely contradictory to the principle of jurisprudence according to which it is opposed to using a statement against a person without giving him the opportunity to cross-examine the person making the statement.

In the case of **Kashmira Singh v. State of M.**, A.I.R. 1952 SC. 159 the accused Kashmira, Gurudayal who was the brother of Kashmira, Prithipal son of Gurudayal and one Gurubachan, a rickshaw puller in this case was being jointly accused of conspiracy and killing a child. The Supreme Court in this case issued some conditions which needed to be fulfilled before taking into consideration the confession of one of the accused against all others.

- Joint trial: The person who is making a confession and the other accused persons are being tried jointly.
- Same offence: All the accused are being tried for the same offence.
- Confessions: The confession must affect the confessor as well as the other accused persons.

### **Indian Law**

1. 30 of the Indian Evidence Act is in the nature of empowering the Court to take into consideration a confession made by one of the accused against the others when they are jointly tried. On one hand the confession, if is voluntary and is considered true

and admissible by the court, of an accused is a very strong piece of evidence against himself, however on the other hand it is a weak piece of evidence against other co-accused.

In its strict legal sense, the confession of a co-accused does not come within the definition of evidence. The reason behind this is that the person who is making such confession hasn't stepped into the witness box and that his testimony has not been subjected to cross-examination, thus such confession is, in reality, a type of ex-parte evidence against other accused persons, it has been held in the case of *Bhuboni Sahu v. King*, AIR 1949 RC 247.

The proper approach, which needs to be adopted by the courts, is to gather together all the evidence against the accused and then to consider them and analyse them as to whether a conviction could safely be based on it while excluding the confession altogether from such consideration. If the conviction can be based on such evidence, then there is no need to bring up the confession, however in reality, instead of following the above-mentioned approach, the court may take up the confession in aid and use it to lend assurance to the other evidence, and thus secure itself to believe that without the aid of the confession, it would not be prepared to accept the other evidence.

While deciding the reliability which can be placed on by the court in the confessions by the co-accused, the Supreme Court has held in the case of **Hari Charan Kurmi v. State of Bihar**, A.I.R. 1964 S.C. 1184 that the confession of a co-accused cannot be treated as substantive evidence, and can be pressed upon only when the Court is inclined to accept other evidence, and feels the necessity of seeking an assurance in support of its conclusions deductible from other evidence.

In criminal cases, where evidence which are adduced are insufficient to prove a person guilty, such person cannot be held guilty relying on the confession of a co-accused. The presumption of innocence comes to his rescue and compels the court to render the verdict that the charge is not proved and accused is not guilty.

### **May Take Into Consideration**

The word "may" in this section is very important to interpret. The presence of this term indicates that such a confession cannot be said to be "evidence" in its technical sense and thus can only support a conviction. Rather, the section gives discretion to the Court either to use it against a co-

accused or not to do so. The same was reiterated by Jackson, J. in the case of **R. v. Chandra**, 2005 ABCA 186.