

VALUE OF CONFESSION: AN ANALYTICAL STUDY OF CO-ACCUSED'S CONFESSION AND RETRACTED CONFESSION

Dr. Vijay Pal Singh *

INTRODUCTION

A confession may be defined as a voluntary and full acknowledgment of guilt made by the guilty person. The etymological meaning of the word "confession" conveys the meaning of completeness, for this comes from a Latin word "*confiteri*" --- (*Con* signifies completeness, and *fateri-fari*, to speak) so a confession in strictness, must be an unreserved and total avowal by the accused person of his guilt; and such a statement must be wholly free from outside influence, either in the nature of threats or inducement."¹ A confession will be usually an outcome of the irresistible prompting of a conscience burdened with guilt and contrition. The reason for making a confession as far as the accused person is concerned is to lighten his oppressive mental feelings, and the solace is a feeling that he is boldly facing the consequences of his guilty act by telling the truth. So, very often prisoners admit that the pain of sufferings of their repeated embarrassment is more terrible and oppressive than the suffering of jail life. This is the highest form of a confession, and was made with a view, probably, to bring upon oneself the deserved punishment. "The first uniform legislation on Evidence was drafted by the Indian Law Commission."² The Bill was however, dropped as it was faulty and it would not be suitable in India. J.F. Stephen then drafted a new Bill, which later became the Indian Evidence Act, 1872.

CONFESSION IN THE EYE OF LAW

We have seen what is strictly meant by a confession. But an "absolute confession" or the "plenary confession" as it is sometimes called is not the only variety that comes up before court for consideration. There may come cases, where prisoners do not make absolute confessions but make statements, which though do not contain direct admission of guilt, yet give rise to inference of guilt. Thus, if a prisoner states that he killed another person, it is a clear confession. But, on the other hand, suppose he states "If I speak, I will be exposing B as murderer who shared with me the jewels from the person of deceased". This statement

* Asst. Professor of Law @ Amity Law School, Amity University Haryana (Gurugram)

¹ Gopal S. Chaturvedi (ed.) *C.D. Field's, Law on Admissions and Confessions* (Delhi Law House, Delhi, 2014).

² The Draft of Indian Evidence Act, prepared by India Law Commission in 1868.

undoubtedly contains incrementing material and from “If I speak, I will be also exposing B as a murderer” there follows an implied admission that the accused person is in some way guilty for the casualty of the deceased. If the prisoner had stated nothing more than this, question of some refinement arises as to whether this statement can be regarded as confession. If it is regarded as a confession, the safeguards allowed by law, attach to it; if not, it will go without these safe guards³.

Rule of Prudence (Regard to Corroboration)

The rule of prudence does not require that “each and every circumstance mentioned in the confession with regard to participation of the accused person in the crime must be separately and independently corroborated, nor is it essential that the cooperation must come from facts and circumstances discovered after the confession was made.”⁴ If the rule required that every circumstance mentioned in the confessional statement must be separately and independently corroborated, then the rule would be meaningless.⁵

Where the circumstances, such as, recovery of bloodstained clothes or the ornaments of the deceased, and similar circumstances connecting the accused with the crime of murder are conspicuous by their absence, the subsequent conduct of the accused in making an attempt to commit suicide, for which the accused had offered possible explanation, would not be sufficient corroboration of a confession by the accused⁶. The extent and the nature of the corroboration required, before a Court can act upon a confession will “depend upon the circumstances of each case.”⁷ The absence of details in the confession is not a reason to treat is as untrue, when there is nothing in the confession which is contrary to the oral evidence.⁸ Law does not presume that such confessions are untrue, but because of the danger of receiving such evidence, judges thought it is better to reject it for the due administration of justice. When hope or fear in respect of the confession was not in question, such statements were admitted as relevant, though with some reluctance and subject to strong warnings as to

³ *Rabindra Kumar Pal @ Dara Singh v. Republic of India*, AIR 2011 SC 1436.

⁴ *State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru*, 2005 CrLJ 3950.

⁵ *Balbir Singh v. State of Punjab*, AIR 1957 S.C. 216; *Hem Raj Devilal v. State of Ajmer*, AIR 1954 S.C. 462.

⁶ *Raghavan v. State of Kerala*, (1962) Ker. L.T. 476. No corroboration, *Pokar Ram v. State of Rajasthan*, (1994) Cr.LJ. NOC 143 (Raj.)

⁷ *In re: Vasamsetti Appa Rao*, AIR 1953 Mad. 1004.

⁸ *Subrmania Goundan v. State of Madras*, AIR 1958 S.C. 66.

the weight to be attached to them.⁹

THE PRINCIPLE UNDERPLAYING IN SEC. 30

Where more persons than one are jointly tried for the same offence, the confession made by one of them, if admissible in evidence at all, should be taken into consideration against all the accused, and not against the individual alone who made it. It appears to be very strange that the confession of one person is to be taken into consideration against another. Where the confession of one accused is proved at the trial, other accused persons have no opportunity to cross-examine him. It is opposed to principles of jurisprudence to use a statement against the person without giving him the opportunity to cross examine the person making the statement.¹⁰ This section, is an exception to the rule that the confession of one person is entirely inadmissible against another. The principle underlying this section is stated by Phear, J. : “it seems to me that it is the implication of himself by the confessing person which is intended by the legislature to take the place, as it were of the sanction of an oath, or rather which is supposed to serve as some guarantee for the truth of the accusation against the other. Where a person admits guilt to the fullest extent and expose himself to the pains and the penalties provided for his guilt, there is guarantee for his truth and legislature provides that his statement may be considered against his fellow prisoners charged with the same offence.” But this principle is not very sound because it does not necessary that a man has truly implicated himself, therefore his implication of another is also true¹¹.

Before the confession of one accused may be taken into consideration against others it has to be shown that:-

1. The person confessing and the others are being tried jointly,
2. They are being tried for the same offence.
3. The confession (to be taken into consideration) is affecting the confessing person and the others.

Under Section 30 the “statement of one accused is admissible as against his co-accused only when they were tried jointly.”¹² Persons originally charged with accused but discharged on

⁹ *Reg v. Baldry*, 5 Cox CC 523; *Ibrahim v. Emperor*, AIR 1914 P.C. 155.

¹⁰ *State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari*, AIR 2013 SC 1441.

¹¹ *State of Gujarat v. Mohammed Atik*, AIR 1998 SC 1686.

¹² AIR 1937 Sind 218.

withdrawal of case against him is a competent witness and his confession cannot be used against the other accused. If the person making the confession died and was never brought to trial, his confession would not be admissible under this section as to the confession of co-accused.¹³ But “where during the course of joint trial of two accused, one died but before his death his confession had been put on record, it was held that the confession could be used against the other accused.”¹⁴

ACQUITTAL OF CONFESSING CO-ACCUSED

Where the confessing co-accused was acquitted of the main offence and the other accused raised the plea that the confessions of such accused should cease to be admissible, the Apex Court held that such plea was not tenable¹⁵. The confessional statement of the co-accused was recorded by the Magistrate under Section 164; Criminal Procedure Code and both the accused were jointly tried. Thus, the requirements of Section 30 were satisfied as the evidence became relevant and did not cease to be so because of the acquittal.¹⁶ The decision of the Apex Court in *Aghnoo Nagendra v. State of Bihar*,¹⁷ clearly stated that “a confessional statement includes not only the admission of the offence but also other admissions of incriminating facts relevant to the offence such as motives, preparation, absence of provocation, concealment of weapons, and subsequent conduct which throw light on the gravity of the offence and the intention and knowledge of the accused.” Each and every admission of incriminating facts contained in the statement is a part of the confessions. The Supreme Court also observed in another case¹⁸ that the word *offence* used in Section 30 includes the abatement of, or attempt to commit, the offence.¹⁹

CONFESSION OF CO-ACCUSED CANNOT BE TREATED AS SUBSTANTIVE EVIDENCE

It is now well a settled Law that confession of a co-accused cannot be treated as substantive evidence. In dealing with the case, against the accused person, the Court cannot start with the confession of a co-accused. It must begin with other evidence adduced by the prosecution and

¹³ *Dengo Kendero v. Emperor*, AIR 1938 Sind 94.

¹⁴ *Ram Swaroop v. Emperor*, AIR 1937 Cal 39.

¹⁵ *Rameshbhai Chandubhai Rathod v. State of Gujarat*, (2009) 5 SCC 740.

¹⁶ *Prakash Dhawal v. State of Maharashtra*, AIR 2002 S.C. 340.

¹⁷ AIR 1966 S.C. 119.

¹⁸ *State v. Nalini*, AIR 1999 S.C. 2640.

¹⁹ *Jayendra Saraswathi Swamigal v. State of Tamil Nadu*, AIR 2005 SC 716.

after it has formed its opinion with regard to the quality and effects of said evidence, then it is permissible to turn to confession in order to receive assurance to the conclusion of guilt if the judicial mind is about to reach on the said other evidence. In other words, confession by co accused can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence.²⁰

The general rule is that confession of an accused is not evidence against anyone but himself. Section 30 of the Evidence Act, is one of the exceptions to that general rule, point is, it permits a Court to take into consideration the confession made by one person as against certain other persons also, but only subject to the conditions mentioned in this section. The conditions are:

1. More persons than one are being jointly tried for the same offence.
2. Confession should have been made by one of them.
3. The confession should affect the maker and the others who are sought to be fastened with the confession.²¹

Explanation to the Section shows that the offence mentioned in it includes abetment of the offence as well. The Section seems to be based on the view that an admission made by an accused of his own guilt, afford some sort of sanction in support of the truth of his confession against other, as well as himself.

CONFESSION OF A CO-ACCUSED REQUIRES CORROBORATION

The statement of a confessing co-accused will not be sufficient corroboration of an accomplice's testimony in order to make a conviction.²² An accused person cannot be convicted solely on the confession of a co-prisoners jointly tried with him for the same offence.²³ The statement of a confessing prisoner stands on an even lower footing than the testimony of accomplices.²⁴ In *Queen Emperor v. Dosa Jiva*, it was further held that the mere production of a stolen property by one accused was not a sufficient corroboration of the Confession of the other.

²⁰ *Balbir Singh v. State of Orissa*, (1995) Cr.L.J. 1762 at p. 1764 Orissa.

²¹ *Shanti Devi v. State of Rajasthan*, (2012) 12 SCC 158.

²² *Queen v. Naga*, 23 W.R. (Cr.) 2.

²³ *Emppress v. Ashootosh Chuckerbutty*, I.L.R. 4 Cal. (F.B.).

²⁴ *Ibid*.

The Court in the instant case held that, even though the confession of the co-accused is a weaker piece of evidence yet the same can be taken into consideration in order to supplement the other evidence available on record.²⁵

CONFESSION OF A CO-ACCUSED WHO IS DEAD

In *Ram Sarup Singh v. Emperor*,²⁶ it was held that “*J*, was put on his trial along with *L*; the trial proceeds from some time and about 6 months before the delivery of judgment, when trial had proceeded for about a year, *J*, died. Before his death, *J*’s confession had been put on the record, R.C. Mitter, J. (Henderson, J., *dubitante*) allowed the confession to go in for corroboration of other evidence but not as substantive evidence by itself. Of course, the confession of a person who is dead and never been brought for trial is not admissible under Section 30 which insists upon a joint trial. The statement becomes relevant under Section 30 read with Section 32 (3) of Evidence Act.”²⁷

MAIN USE OF CO-ACCUSED’S CONFESSION

Under Section 30 the Evidence Act, “confession of a co-accused can only be taken into consideration but is not in itself substantive evidence.”²⁸ Where such statement is exculpatory, it cannot be used against another accused in support of his conviction. It would be dangerous to do so.²⁹ In *Nathu v. State of U.P.*³⁰, it has been laid down that “confession of co-accused are not evidence as defined in Section 3 and no conviction can be founded thereon, but, if there was other evidence on which a conviction can be based, they can be referred to as lending assurance to that conclusion and for fortifying it”. In *B.B. Subbarao v. State of Andhra*,³¹ the observations made are of the following effect: “*A co-accused’s confession can be used not as any substantive evidence but only as an aid the judges mind to scrutinize other evidences. A confession could be used only to lend assurance to the other evidence.*”

Thus, the Law is well settled that the confession of a co-accused is not substantive evidence in the sense that conviction on that alone must stand and Section 30 has merely given the

²⁵ *Ollala Kamlakar v. State of Maharashtra*, (2003) (1) Mh. L.J. 849.

²⁶ AIR 1937 Cal. 39.

²⁷ *Haroom Haji Abdulla v. State of Maharashtra*, AIR 1968 S.C. 832 at p. 835.

²⁸ *Ram Chandra v. State of U.P.*, AIR 1957 S.C. 381 at p. 388.

²⁹ *Rajnikant Keshav v. State*, AIR 1967 Goa 21 at p. 25.

³⁰ AIR 1956 S.C. 56

³¹ (1955) Andh. L. T. (Cr.) 99.

Court the discretion to call it in aid in appropriate cases³². It can be used only for lending assurance and is to be merely an element in considering the evidence in the case. If there is no other evidence or if the other evidence in the case is insufficient to establish the case against the accused, the confession cannot be taken into consideration against the co-accused³³. It cannot be called in aid to supplement evidence otherwise insufficient and in no case can it be used to fill up gaps in the prosecution evidence.³⁴

VALUE OF THE CONFESSION GIVEN BY CO-ACCUSED

The weight to be attached to the confession of accused person jointly tried, as against each other after their admission, as evidence, will depend upon the probable force of such confessions.³⁵ The utmost value that can be claimed for the confession made by prisoners implicating persons other than themselves is that, if there is other untainted evidence against the accused, they may be considered together with such evidence. But, when the other evidence is not untainted, such statements are no legal corroboration of the tainted evidence of an approver.³⁶ The value of a confession of a co-accused was comparatively, recently considered by the Privy Council in case of *Bhuboni Sahu v. King*,³⁷ where it was laid down that it cannot be made the basis of a conviction.

It seems clear that, the view of the Privy Council was that a confession of a co-accused can be used to support other evidence. In other words, it can be used to corroborate other evidence. The conviction must be based on the other evidence. The confession can only be used to help to satisfy a Court that the other evidence is true.³⁸

EVIDENCE OF ACCOMPLICE

An accomplice means a person who has taken part in the commission of a crime.³⁹ When an offence is committed by more than one person in concert, everyone participating in its commission is an accomplice. Conspirator laid their plot in secret; they execute it ruthlessly and do not leave much evidence behind. Therefore, the police have to select one of them for

³² *Baldev Singh v. State of Punjab*, (2000) 6SCC 564.

³³ *Gulam Mohd. @ Gulal Shaikh v. State of Gujarat*, AIR 2009 SC 509.

³⁴ *In re. Kodur Thimma Reddi*, AIR 1957 A.P. 758. At p. 761.

³⁵ 6 M.L.J. Art., p. 90.

³⁶ 2 Weir 742 at p. 744.

³⁷ 53 C.W.W.N. 609 (P.C.).

³⁸ *Gunadhar Das v. State*, AIR 1952 Cal. 618 at p. 621.

³⁹ *D. Velayutham v. State*, AIR 2015 SC 2506.

the purpose of being converted into a witness. He is pardoned, subject to the condition that, he will give evidence against his former partners in the crime. He is then known as accomplice, turned witness or an approver. He appears as a witness for the prosecution against the accused person with whom he acted together in the commission of the crime⁴⁰. The question is to what extent his evidence or testimony can be relied upon to convict his former associate and to deprive them off their life and liberty? What is the value of the evidence of a former criminal turned witness?

Two provisions in the Act touch this problem. First is, Section 133, which categorically, declared that an accomplice is a competent witness and the court may convict on the basis of such evidence and the conviction will not be illegal, simply because, it proceeds upon the uncorroborated testimony of an accomplice. The other provision dealing with the matter is in illustration (b) to Section 114, which says that the Court may presume that an accomplice is unworthy of credit unless corroborated in material particular. These provisions should first be reproduced.

SECTION 133 ACCOMPLICE AND SECTION 114 (B) OF EVIDENCE ACT

An “accomplice shall be a competent witness against an accused person”⁴¹; and “conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice”.⁴²In reference to the requirement of corroboration, the word used is “may” and not “must”, and no decision of a Court can make it “must”. It ultimately depends upon the Court’s view as to the credibility of evidence tendered by an accomplice. If, it is found credible and cogent, the Court can record conviction on its basis even if uncorroborated. Corroboration in material particulars means that there should be some additional or independent evidence;

1. rendering it probable that the story revealed by accomplice is true and that it is reasonably safe to act upon it;
2. identify the accused as one of those, or among those, who committed the offence;
3. showing the circumstantial evidence of his connection with the crime, though it may not be direct evidence; and

⁴⁰ *Parmananda Pegu v. State of Assam*, AIR 2004 SC 4197

⁴¹ *Chandra Prakash v. State of Rajasthan*, 2014 CrLJ 2884.

⁴² *Adamnbhai Suleman Bhai Ajmeri v. State of Gujarat*, (2014) 7 SCC 716

4. ordinarily, the testimony of an accomplice should not be sufficient to corroborate that of the other.⁴³

Section 114 illustration (b): the Court may presume that an accomplice is unworthy of credit, unless he is corroborative in material particular:

The apparent contradiction between these two declarations should be first resolved. Section 133, is a clear authorization to the Courts to convict on the uncorroborated testimony of an accomplice, but since such a witness, being criminal himself, may not always be trustworthy, the Courts are guided by the illustration of Section 114 that, if it is necessary the Court should presume that he is unreliable unless the statement is supported and verified by some independent evidence. A statement to this effect to be found in judgment of Chandrachud, J., (afterwards C.J.), in *Dagdu v. State of Maharashtra*,⁴⁴ “there is no antithesis between Section 133 and illustration (b) of Section 114, because the illustration only says that the Court ‘may’ presume a certain state of affairs. It does not seek to raise a conclusive and irrefutable presumption. Reading the two provisions together, the position which emerges is that though an accomplice is a competent witness and though conviction may lawfully rest on his uncorroborated testimony yet the Court is entitled to presume and may indeed be justified in presuming that no reliance can be placed on the evidence of an accomplice unless that evidence is corroborated in material particulars, by which it is meant that there has been some independent Evidence tending to incriminate a particular accused in the commission of the crime. It is hazardous, as a matter of prudence, to proceed upon the evidence of self-confessed criminal, who in so far as approver in concern has to testify in terms of pardon tendered to him.”

Comparison of Evidence of Co-Accused and Accomplice: It may be noted that the confession of co-accused, must implicate him as well as some other accused. Further, the confession made at previous trial will not be relevant. When they are jointly tried but for different offences, then also the confession will be irrelevant. Furthermore, the confession must not have been made under force or fraud⁴⁵. The confession of a co-accused is not treated in the same way as the testimony of an accomplice:

⁴³ *K. Hashim v. State of T.N.*, (2005) 1 S.C.C. 237.

⁴⁴ (1977) 3 S.C.C. at pp. 74-75.

⁴⁵ *Mrinal Das v. The State of Tripura*, AIR 2011 SC 3753.

1. The confession of accused is not *evidence*, as it is not recorded on oath, nor it is given in the presence of the accused, nor its truth can be tested by cross examination. The accomplice's evidence is taken on oath and tested by cross examination; a higher probative value is thus given to it.
2. The confession of a co-accused must only be taken into consideration along with other evidence in the case, and it cannot alone form the basis of conviction. A conviction is not legal merely because it proceeds upon the corroborated testimony of an accomplice.
3. The philosophy of Section 30 is that confession of co-accused affords some sort of sanction in support of the truth of confession against others and himself.

Accomplice evidence is also not free from criticism. "An approver is the most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in Court."⁴⁶ However, the Supreme Court has taken care of it by insisting on corroboration. In many cases of prosecution of members of organized crime, an approver and few co-accused maybe the only evidence and it is obvious that such persons would never be convicted if Section 133 was not there in the statute book.

RETRACTED CONFESSION

The Supreme Court in *Vadivelu Thevar v. State of Madras*⁴⁷ has held that "Court should be circumspect and look for corroboration in material particulars, reliable testimony, direct or circumstantial, before accepting the testimony of a partially unreliable witness." This means that a Court has to shift, from evidence before it, parts which are wholly reliable and parts which are wholly unreliable and those which are partly reliable and partly unreliable. Even a partly reliable part of evidence may form the basis of a conviction where it is corroborated in material particulars by some reliable evidence.⁴⁸ Of course, if a witness or any part of his version is wholly unreliable, no use can be made of the wholly unreliable evidence. But, before this is done, there has to be findings, based on sound and reasonable grounds that witness or a piece of evidence to be rejected is wholly unreliable.⁴⁹

BELATED RETRACTION IS NOT TREATED AS GENUINE

⁴⁶ *State of Rajasthan v. Balveer @ Balli*, AIR 2014 SC 1117.

⁴⁷ AIR 1957 S.C. 614

⁴⁸ *A. Tajudeen v. Union of India*, (2015) 4 SCC 435.

⁴⁹ *Devi Prasad v. State*, AIR 1967 All. 64. At p. 71.

A confessional statement can be used as Corroborative evidence but in the absence of any positive and substantive evidence, it would be highly unsafe to act upon confessional statement, which has been retracted.⁵⁰ Had retraction been genuine, it would have been made earlier and not after 5 years after the statement of the appellant had been recorded under section 108 of Custom Act. The appellant has stated that as a result of the torture by the custom authority, he had suffered a neck injury and was made to sign on blank paper. If this was true, he would have pointed it out to the Magistrate when he was produced before him on the following day. Between 28th December 1989, the date on which the confession was made and 25th July 1994, the date when it was retracted, the appellant had tons of opportunity to make the said retraction.⁵¹

CIRCUMSTANCES WHICH WEAKEN THE VALUE OF A RETRACTED CONFESSION

A confession retracted at the earliest possible moment after the accused got out of police influence, is held to be deserving of no weight.⁵² But, it has to be rejected. Similarly, where there was misconduct of the police and the confession was retracted, it would not be possible to convict the person on strength of retracted confession alone. Where the confession was recorded by the magistrate in jail, with the police officer in the next room, and was subsequently retracted, it cannot be acted upon unless sufficiently corroborated. Where there are two sets of evidence, neither of which can alone be accepted without corroboration, they cannot, each in its truth be taken to corroborate the other, and the two sets of evidence cannot be pieced together so as to justify any Court placing reliance on the two sets of evidence. So, evidence brought under Criminal Procedure Code, cannot be accepted as a proper corroboration of a retracted confession.⁵³

IMPORTANT PRINCIPLES REGARDING RETRACTED CONFESSION

To sum up, the following important principles are to be observed before a court uses the confession of an accused and, particularly, a retracted confession:

⁵⁰ *Safeeq Ahmad v. State of U.P.* (1989) All. L.J. 699 at p. 1002.

⁵¹ *Sule Kareem v. Asstt. Collector of Customs (R&I)* (1998) Cr.L.J. 3052 at p. 3060 (Bom.).

⁵² *Shankar @ Gauri Shankar v. State of Tamil Nadu*, (1994) 4SCC 478.

⁵³ *Aloke Nath Dutta v. State of West Bengal*, (2007) 12 SCC 230.

1. The provisions of the evidence after do not prevent the court from taking into consideration confession of an accused against his co-accused.
2. A confession is not to be regarded as involuntary merely because it has been retracted, by the maker, at the trial.
3. The confession must implicate the maker substantially and to the same extent as the other accused person against whom it is sought to be taken into consideration.
4. If it appears, on a reading of the whole confession, to be exculpatory, it cannot be used as a confession particularly against the other accused, even though it contains grave incriminating statements.
5. Before using the retracted confession, it should be proved as voluntary and true.
6. Though there is no rule of law requiring a retracted confession to be supported by corroboration on material particulars, as a matter of prudence and practice, the Court would not ordinarily act upon it to convict a co-accused without the strongest and fullest corroboration on material particulars.⁵⁴
7. Such corroboration should not only relate to the *factum* of the crime but also as to the connection of co-accused with the trial.
8. It is only when the Court is not in a position to come to a conclusion on the evidence adduced, that it can call for such confessions in aid to lend assurance to the other evidence.
9. It shall not be used as the foundation of a conviction, nor to support as a corroborative piece of evidence, to the evidence of accomplice or approvers.

It has been held that though a retracted confession is admissible, it can only be used to support the other evidence of the witness, but can neither be made the foundation of a conviction nor to support the evidence of other accomplice or approvers.⁵⁵ Where the appellant was charged with murder, the Apex Court held that it is retracted judicial confession of another accused and could not be used against the appellant as the appellant who was tried along with other accused had been acquitted by the High Court under the charge of conspiracy to murder and the other accused was not charged for the offence of murder. But, they relied on the evidence of the approver and the retracted confession of the appellant which was corroborated by the recovery of a blood stained razor and medical

⁵⁴ *Budha Majhi v. State of Orissa*, (1964) 1 Cr.L.J. 487.

⁵⁵ *Mohammad Hussain v. Dalip Singhji*, AIR 1970 S.C. 45.

evidence and held that there was sufficient evidence to prove the guilt of the appellant in respecting the charge of murder.⁵⁶

CONCLUSION

The above analysis of judicial decisions puts forth the approach towards retracted confessions of the Judiciary to be that just because a confession has been retracted the statement need not be discarded. If corroboration as to the facts stated in the confession is available through independent evidences then reliance can be placed on such statements.

The reliability of retracted confession in some accounts although diminishes due to retraction but does not get completely wiped out. The Courts also have held that a confession can form the sole basis of conviction but when it is retracted it deserves to be tested as to its voluntariness and truthfulness. It is basically a rule of prudence and practice that the courts have evolved this mechanism over the years.

While analyzing the law on the subject, a need was felt for development of the rule of prudence into a Rule of Laws specifically pertaining to the subject, which is in accordance to the practice and procedure laid down by the Supreme Court through catena of decisions.

⁵⁶ *Vinayak v. State of Maharashtra*, AIR 1984 S.C. 1793