



A COMPARATIVE STUDY ON THE RELEVANCE OF CONFSSIONAL STATEMENT IN CRIMINAL PROCEEDINGS BETWEEN NIGERIA AND SUDAN.

Hamidu Hardo¹, Ph.D. & Ibrahim Aliyu Shehu², Ph.D.

Paper Received On 20 June 2023

Peer Reviewed On 22 July 2023

Published On: 1 August 2023

Abstract

Notwithstanding the fact that confession is one of the means of establishing or proving a criminal case, but police investigation through confessional statement of the accused person were sometimes rejected based on confessional statement that are made not voluntary. The accused person may tend to make it forcefully by implicating himself. Many countries have their rules which regulate the admissibility of confessional Statements. These rules are made to prevent wrongful conviction of an accused person and also it deterred police from abusing the process of interrogation. Most of the times some techniques of interrogation apply by police officers violate the rights of the accused person. In this article it would look at judicial and statutory authorities on what is confessional statement, the difference and relationship of confession and admission, condition for the admissibility of confessional statement the role play by courts in relation to confession and reference will be made on the position of Nigeria law and Sudan law on confessional statement. The rationale behind the choice of both countries for comparative study is that the received English law has been there major source of law as there were colonized by the Britain.



Scholarly Research Journal's is licensed Based on a work at www.srjis.com

What is confession?

A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime³

¹ Lecturer at Islamic Law Department, Faculty of Law, Yobe State University, Damaturu, Nigeria

² HOD Private and Public Law Department, Faculty of Law, Yobe State University, Damaturu, Nigeria

³ S.28 Evidence Act LFN 2011. See Haruna Isa Vs State (2008)3 NCC 577

Black law dictionary⁴ defined confession to mean a statement made by a criminal suspect oral or in written acknowledgement of guilty it often includes details about the crime.

Confession was also defined as a voluntary statement made by a person charged with commission of a crime or misdemeanor, communicated to another person wherein he acknowledges himself to be guilty of the offence charges⁵.

In the case of SUBERU-V-STATE⁶ defined confession as admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that offence

In Sudan confession is defined as an admission made at any time by a person charged with a crime, stating or suggesting the inference, that he committed that crime⁷ Among the definitions of confession mentioned above to me the most comprehensive definition is the one provided by the Jacob Abiodun Dada which he inserts the word voluntary. As a general rule any confession made involuntary it is not admissible therefore the definition of confession provided by the evidence. Act and others are incomplete. In the evidence Act confession is contained in the provisions of section 28-32 of the evidence Act of 2011. Confession is classified into two judicial confessions and extra judicial. A judicial confession is a confessional statement that is made in the court before a judge or magistrate in the process of judicial proceeding for instance where an accused person was arraigned and the charge was read to him and he pleaded guilty. Confessional statement may be made before or during trial.

An extra-judicial confession is a confessional statement that is made by an accused person elsewhere other than before a judge or magistrate during an investigation by police officers or other law enforcement agent. So, any statement made by accused person outside the court which indicates that he is guilty of the offence he was charged is an extra judicial confession. Extra judicial confession may be oral or written although police interrogation usually records the confessional statement voluntarily made by an

⁴ Black law Dictionary 9 edition Bryan A. Garner

⁵ Jacob Abiodun Dada the law of evidence pp357

⁶ (2010)1NWLR PT1176 494 at 449

⁷ Krishna vasdev the law of evidence in Sudan Butter worth Co (publisher) LTD 88 Kingsway wc2B 6AB Englang London at pp 268

accused person. This statement may be tendered in court during trial. A conversation with one self is also amount to confession as in the case of *SHAHOO-V-State of up*, AIR 1966 an accused person was charged with the. Murder of his daughter-in-law whom he was always quarrelling with, was seen on the day of the incident of the murder going out of the house of the deceased saying “I have finished her and her daily quarrels” the statement was held to be a valid confession.

Difference between admission and confession

Admission and confession are very important in both civil and criminal litigation the two words means acknowledgement of the truth of something. Admission is a statement made by a person acknowledging that something as truth, while confession statement is a statement made by an accused person acknowledging that he is guilty of a crime charged⁸.

According to Black law Dictionary the difference between admissions in criminal cases and confession by the accused is the difference in effect between admission of facts from which the guilt of the accused may be inferred by the jury and the express admission of guilt itself.⁹

In some cases, silence may mean an admission when both parties are speaking and no one occupies superior position in relation to the other. In law a person is entitled to refrain from answering a question which was aim at discovering whether he has committed a criminal offence. In English law which Nigeria law is the photocopy admission is applied to civil cases and facts, in criminal cases which do not involve criminal intent, while confession is acknowledgement of guilt by the accused person?

An admission is a statement, oral or documentary which suggest any inference as to any fact in issues or relevant fact, and which is made by any of the persons, and in the circumstances, hereinafter mentioned that is to say section 20, 21, 22 and 23 of the said Act¹⁰

⁸ Isaac Ogbah Evidence law on confessional statement (the best evidence)

⁹ Bryan Garner 8th Edition pp 254

¹⁰ Evidence Act 2011

A confession is an admission made at any time by a person charge with a crime stating or suggesting the inference that he committed that crime¹¹

An admission is a statement that may or may not be conclusive proof of a fact in issue or relevant fact, but in confession the admission must be conclusively prove the guilt of the maker of the admission.

EFFECTS OF CONFESSIONAL STATEMENTS

Confessional statement becomes relevant and admissible.

Section 30 of the evidence Act 2011 provides that where information is received from a person who is accused of an offence, whether such person is in custody or not, and as a consequence of such information any fact is discovered, the discovery of that fact, together with evidence that such discovery was made in consequence of the information received from the defendant, may be given in evidence where such information itself would not be admissible in evidence.

Confession made after duress or threat was removed is relevant. If the confession was obtained after the impression caused by promise, inducement, threat or duress was remove in the opinion of the court, then the confession is admissible and it is relevant.

A confessional statement obtained from the accused person on the basis of promise of secrecy or through deception is admissible provided it was voluntarily made.¹²

In the case of *igbinovia-v-State*¹³ Obaseki, JSC stated that deception is a method used to fight and flush out criminals who wear the garb of innocence. In this case the appellant was charge and convicted with murder. To get information from him, the police officer was disguised as a suspect in the midst of suspects locked up in one of the police cells. The police officer lured the suspect by telling him of his own exploits. The appellant in turn confessed that he took part in killing the deceased person mentioning the date, and the venue of the crime. It was contended on his behalf that the confessional statement was inadmissible. In rejecting the contention, the supreme court held that if a policeman does not present himself as a policemen but as a wild and vicious criminal and other suspected

¹¹ Section 28 Evidence Act 2011

¹² R-VS-EDWARD (1991)Crim LR 44 CA.

¹³ (1981)2SC5

criminal take him as such and in order to boost their ego and establish better understanding with him, open their mouths and pour out stories of what to them are brave deeds of courage, but which to civilized human societies are atrocious acts of violence against society and humanity, that information cannot become inadmissible only by reason of the concealment of the status of the disguised policeman who was fed with such valuable information.

In ANTHONY NWACHUKWU VS STATE¹⁴ the court held that the effect of voluntary confession by virtue of S.28 of Evidence Act 2011 a confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. If made voluntary, a confession is deemed to be a relevant fact against the maker.

In SABURI ADEBAYO VS STATE¹⁵ the court held that confession is the best evidence in criminal law if the accused person admits that he committed the offence for which he is charged, for this reason the accused is the person that made the statement that he committed the offence and he confesses and admits the offence. There is no other better evidence than confession. Therefore, the position of law is that a judge can admit confessional statement, if it was made voluntarily and without any inducement, threat or promise from a person in authority.

A person may be convicted on his own confession alone, there being no law against it. The law is that if an accused person makes a free and voluntary confession which is direct and positive and is properly proved the court may if it thinks fit, convict him of any crime upon it.¹⁶

It is very important to note that evidence. Act, 2011 in section 29 not like the repealed Act in section 27(2) did not clearly use the word voluntarily as a condition for the admissibility of a confession and its relevance as a fact.

Also, the evidence Act provides to the effect that evidence given in other proceedings amounting to a confession is admissible.

¹⁴ (2008)3 NCC 100

¹⁵ (2008)3 NCC 305

¹⁶ Philip Ekpenyong –vs. state (1991)6 NWLR Pt 200 pg689, 704 see also Anthony Nwachukwu vs. state (2008)3 NCC 100

A confession becomes irrelevant and inadmissible in situations provided by section 29, of evidence Act 2011.

A confession made by an accused person is irrelevant in a criminal proceeding, if the accused person confession was caused by any inducement, threat or promise coming from a person in authority. For confession to be irrelevant the following conditions must be satisfied. The confession must have been made because of the promise, threat or inducement. A confessional statement should be free and voluntary. Where confession was made through fear or hope it is inadmissible.

- a. The promise, threat or inducement must be made in a person in authority. A person in authority is not restricted to only police officer or judge but it includes every person who has power over the investigation or trial.
- b. It should relate to the charge in question.
- d. It should hold out some material benefit or advantage.

The above conditions must be exist together, it is also requires that if it appears to the court that the confession was improperly obtained, it becomes inadmissible.

A confessional statement made to the police: it is usually presumed that police has a great influence over the actions of the accused, so there is a probability that confession obtained by the police are tainted with inducement or threat. Therefore it is imperative to prevent the practice of police by extracting confession through torture or oppression.

CONFESSONAL STATEMENT OF CO-ACCUSED PERSON

The position of law is that a confession made by one accused person is a relevant fact against the person making it only and not against any other person the confession may implicate. Under the provision of Section 29 (4) of the Nigerian Evidence Act 2011, is to the effect that a confessional statement made by one accused is not admissible against a join accused except where he adopts it by his words or conduct.

In the case of *OZAKI-VS-STATE*¹⁷ where the court held that it is an error in law to convict the accused person on the statement of another accused to the police, it is injustice and a violation of the rules of evidence.

¹⁷ (1990)1NWLR Pt124 90

In the case of STATE VS GWANGWAN¹⁸ where the court held that a confessional statement of an accused person is only evidence against the accused not against co-accused persons and is a misdirection that may lead to quashing of the conviction. It is a rule in the Sudan that a confession made by an accused person, whether outside the court or before a magistrate at the stage of investigation, is no evidence against the other accused who are being jointly tried with him¹⁹ Section 221 of the code of criminal procedure of Sudan provides

Where there are several accused, the statements of each made in answer to examination under S.218 or made under S.179 may be taken into consideration by magistrate or court and shall be admissible for or against himself and any of the other accused at the same or any subsequent stage of the same proceedings, provided that such statement made by one of the accused shall not be admitted at the trial of the other accused unless the accused person who made such statements is being tried jointly with the other accused and the statements were made in the presence of the other accused.

RULES CONCERNING ADMISSIBILITY OF CONFESSION IN SUDAN

In the case of SUDAN GOVT. VS NYINKUANYI AWAK²⁰ Linsay C.J stated that

The court in this country follow the general principles of the English law of evidence relating to confessions, where appropriate to Sudan conditions and subject to statutory directions of any Sudan Ordinance relating to confessions.

The most important statutory provision on confession is section 118 code of criminal procedure of Sudan which before 1974 had only two sub section the third sub section was added after the promulgation of the permanent constitution of Sudan. My concerned here is the first two subsections, it reads:

Sub (1) No policeman or person in authority shall make use of any threat or promise of an advantage towards any person in the investigation.... In order to influence the evidence he may give.

¹⁸ (2015)EJSC Vol. 21) 29

¹⁹ Sudan Govt. VS Umbedda wad Abdelwahid and others(1915)130 proc 15:1 SLR (Crim) 12 at 13

²⁰ (1952)AC CP 9752 BGP Maj. Ct 41 c 1052 unreported

Sub (2) but no policeman or any other person shall prevent any person by any caution or otherwise from making in the course of investigation any statements which of his own free will he may be disposed to make.

This section prohibits persons in authority the use of any threat or promise of advantage toward any person. Therefore confession shall be made by the accused person voluntarily without any element of duress or threat.

In SUDAN GOVT. VS AHMED SAYED ALI²¹ where it was held that a confession is inadmissible in evidence if a threat was made to the accused in order to influence his evidence or if the magistrate knew that the statement was not voluntary.

In another case of SUDAN GOVT. VS AHMED MOHAMMED HAMMAD²² Attig J stated It is a cardinal rule that a confession must be voluntarily and not the outcome of a threat, promise or inducement by a person in authority, therefore any confession obtained by a police investigator or any other person in authority, in any of the non-validating circumstance mentioned above is irrelevant and should be given no weight.

A confession becomes irrelevant when it is found not to have been given voluntarily or obtained by torturing the accused person or making promise or any other sort of inducement. Where it appears to the judge from the circumstances that the confession was obtained by fear, promise or inducement by person in authority it should be rejected.

THE ROLE OF THE COURT ON THE ADMISSIBILITY OF CONFESSSIONAL STATEMENT

Law court has essential role to play in determining the admissibility or otherwise of any confessional statement more especially where there is alleged of threat or inducement. The court has to look into it to determine whether the threat or inducement is enough to warrant vitiating condition. Also the court put some questions to a witness on anything to do with the confession of the accused person, for instance how does accused person confess or before who does accused person confessed. Finally, the court has to consider is the confession relevant with the fact in issue.

²¹ (1946) AC CP 120 46 NP Maj.Ct 8 46 Unreported

²² (1972) SLJR 19 at 21

CONCLUSION

Having cursory look on the legal framework of both countries' i.e Nigeria and Sudan as it relates to their penal statutes respectively, it is therefore apparent that the essence of both enactments is to ensure voluntariness of confessional statement obtained or sought to be obtained from a person alleged to have committed a crime while admission aimed at confirming a statement of true occurrence of an events in issue. The provision of section 29 of the Nigerian Evidence Act 2011 is to the effect that confession must be voluntary. Therefore, it is apparent that some suspects will not volunteer statements this is not enough because there are some criminals that will not speak the truth unless threatened or induced in one way or the other. Therefore, observing the provision of this section strictly would not yield result except some ways of threat or inducement are adopted in extracting confessional statement from the accused persons. The method adopted by the Nigerian and Sudan police in obtaining confessional statement from the accused persons is too crude and therefore not in order, because of the brutality and torturing of the accused persons. The immature method employed by police in investigation faces problems for instance lack of trained personnel's, lack of education.

RECOMMENDATIONS

1. Generally, the working conditions of police need to be improved in order to make them perform their duties diligently.
2. The government and development partners should organize regular capacity building workshops and training on the personnel of the Nigerian Police Force.
3. The recruitments process of the Nigeria Police Force should be transparent and based on merit.
4. Government should ensure strict adherence to the rule of law by personnels of the Nigeria Police force.
5. Government should ensure proper enlightenment for personnel of the Nigeria Police Force on existing penal laws in particular and other statutes generally.

Cite Your Article As:

Hamidu Hardo, & Irahim Aliyu Shehu. (2023). A COMPARATIVE STUDY ON THE RELEVANCE OF CONFESSIONAL STATEMENT IN CRIMINAL PROCEEDINGS BETWEEN NIGERIA AND SUDAN. *Scholarly Research Journal for Humanity Science & English Language*, 11(58), 483/491. <https://doi.org/10.5281/zenodo.8260762>