

Value of Out-of-Court Confessional Statements in Rwandan Criminal Legal Practice

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Abstract

In criminal proceedings, the confession of an accused is the best evidence and has a considerable force or value than all other proofs. It is one of the most powerful types of evidence that exists. This study explores the value and weight of confessional statements made in police and in prosecution authority in Rwanda. It examines the provisions governing the admissibility of the confessional statements made in the phase of the investigation, their judicial considerations and how their application should be efficiently evaluated in the aim to safeguard the rights of the accused person. In this perspective, different situations where an accused might reverse in court his extrajudicial confessional statement were qualitatively analyzed. This research argues that the first impressions of a best Rwandan judge could be always to treat extra-judicial confession as suspicious evidence. This contribution commends legislative enactment and the creation of awareness of the judges and the court animators towards on a careful analysis of extrajudicial confession.

Key Words: *Confessional statements, Evidence, Admissibility, Criminal Justice, Judiciary, Rwanda*

1. Introduction

Principally pieces of evidence are the basis of justice. This principle is often referred to as the free assessment of evidence and is seen as a corollary of the search for material truth.¹ Rwandan law provides that judges decide cases according to the pieces of evidence² and basing their decisions on the relevant law or, in the absence of such a law, on the rule they would have enacted, had they to do so, guided by judicial precedents, customs and usages, general principles of law and written legal opinions.³ Decisions regarding the admissibility of evidence are left entirely to the discretion of the judge, who determines both the admissibility and the weight of the evidence presented.⁴ The Rwandan criminal law provides that evidence shall be based on all the facts and legal considerations provided that parties are given an opportunity to present adversary arguments. The court decides at its sole discretion on the veracity and admissibility of incriminating or

exculpatory evidence.⁵ They are produced using papers or documents, witness testimony, confessions, scientific evidences, and physical proofs.⁶

A confession is the best evidence that can be produced in a court. Before a confession can be received as such, it must be shown that it was freely and voluntarily made.⁷ A confession is worthless if it relates to matters outside of that knowledge or experience.⁸ As point out by Murray,⁹ at least in theory, all countries agree that involuntary confessions must be excluded. Beyond that the rationales, evaluative standards and the rigor of exclusionary practices vary greatly. Rwandan tribunals have different views on the values of extrajudicial confessions. In *Prosecutor v. Tumusime*,¹⁰ the accused, charged of the rape of a minor, has confessed before an official of police that he has violated a minor. In the trial court,

⁵ Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, Article 86; Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 119.

⁶ Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 9.

⁷Tajudeen, O., I. (2013). The Relevance of Confessions in Criminal Proceedings. *International Journal of Humanities and Social Science*. 3(21):291-300, at p.291.

⁸ Ibid, p.292.

⁹ Ibid, (n 1) at 769.

¹⁰ *Prosecutor v. Tumusime*, Intermediate Court of Nyagatare, Case RP 00049/2016/TGI/NYG, Judgement of 24 April 2017.

¹ Murray, J. (2010). Assessing Allegations: Judicial Evaluation of Testimonial Evidence in International Tribunals, *Chicago Journal of International Law*. 10 (2): 769-797. at p.792.

² Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 4.

³ Law n° 21/2012 of 14 Jun 2012 relating to the civil, commercial, labour and administrative procedure, Article 6.

⁴ Ibid, (n 1).

the accused has retracted his confession. He was alleged to have threatened with further torture including being beaten during interrogations by officers of police, in order to make a confession. The judge has based his decision on the confession made in police and convicted to him to imprisonment for 15 years. In the same vein, in *Prosecutor v. Sekamana*,¹¹ the case of rape, even the accused has told to the court that he had been induced and beaten to confess in the police. The court has recognized the challenged confession as true and sentenced to him to life imprisonment. In those judgements, the courts considered the contents of the extrajudicial confession before determining whether it is admissible or non-admissible. This consideration can, in some cases, create potential prejudice to the accused. The court would find his decision to the prescribed requirements for admission of the confession and extrajudicial confession as valuable evidence.

It is not intended that this paper will put an end to the enormous challenges of the inadmissibility of pieces of evidence by the Rwandan courts and tribunals. Nevertheless, this study aims to contribute

¹¹*Prosecutor v. Sekamana*, Intermediate Court of Nyamagabe, case no RP 0094/15/TGI/NYBE, Judgment of 25/09/2015.

to the existing scholarship by suggesting alternative legal analyses that could be used by criminal courts and tribunals in the admissibility of confessional statement, particularly in the case of extrajudicial confession in Rwanda. Ultimately, this paper examines the provisions governing the admissibility of extrajudicial confessions made in the phase of investigation, their judicial considerations and how their application should be efficiently evaluated in aim to safeguard the rights of the accused person. This article begins with the introduction. It proceeds to examine the legitimacy of confessions in Rwanda, the admissibility and evidentiary value of statements made in police and prosecution amounting to the confession.

1. The legitimacy of confessions in Rwandan criminal law

A confession is defined as an unequivocal acknowledgment [by an accused or suspect] of his guilt, the equivalent of a plea of guilty before the court.¹² The confessions could be made freely and voluntarily by accused, without any undue influence. The suspect should not be subjected to fear, prejudice or hope of advantage exercised by a person in

¹² Victor Cole, R.J. 2010. Equality of Arms and Aspects of the Right to a Fair Criminal Trial in Botswana. PhD thesis, Stellenbosch University.

authority.¹³ Tajudeen point out that a confession is the best evidence in criminal proceedings if made in court hearing is of greater force or value than all other proofs.¹⁴ Rwandan law refers confession to the statements of accused makes before the court and such statements serve as plaintiff arguments.¹⁵ When there are two or several co-accused any judicial or extrajudicial confession by one of them is a confession on his side only and does not bind the other co-accused.¹⁶ A judicial confession may be taken in whole and may be conclusive and absolute evidence against the suspect or accused, confined to him, and would be binding to a court or tribunal. According to article 110 al 2 of 2004 Rwandan Evidence Act, it is prohibited to the court to retract portions of statements and to use them as counterarguments against the party.

The confession of guilty has many benefits in Rwandan criminal proceedings, in judging and on the accused himself. Firstly the processing of those criminal cases are accelerated thus the court must try the case on merit within fifteen (15) days of receipt of the case file.¹⁷ Secondary, it absolves

the court from having to provide evidence against the accused and allows it simply to determine the penalty after verifying the legality and sincerity of the confession. Lastly, the penal code provides it as a cause of mitigating circumstances. The judge may reduce penalties when the accused, at the outset of the trial in the first instance, the accused pleads guilty in a sincere confession.¹⁸ In *Ruramugaruye v. Prosecutor*,¹⁹ the Supreme Court has interpreted and enlarged the benefit of confession in appeal. The Supreme Court has pointed out that the reduction of penalties could be done also in appeal when an accused sincerely confesses to have committed a crime.

Even if judicial confession may be simplified and accelerated court procedures, judges have to evaluate the credibility of confessional statements for its veracity and its relevance to the matter at issue. A voluntary false confession may appear before the trial court. Ottmar wrote that one can speak of a false confession when a person falsely admits to having committed or abetted a crime, or falsely

¹³ Ibid.

¹⁴ Ibid, (n 7), at p.293.

¹⁵ Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 110.

¹⁶ Ibid, Article 111.

¹⁷ Ibid, Article 35.

¹⁸ Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code, Article 77, 3.

¹⁹ *Ruramugaruye Eric v. Prosecutor*, Judgement N° RPAA 0024/14/CS of 19 May 2017, Supreme Court, at paragraph 17.

incriminate others.²⁰ As it has been experienced in Gacaca courts,²¹ people can make voluntary false confessions when he happen feelings of guilt over past transgressions, the inability to distinguish fact from fiction and to help or protect the real criminal.

A false confession can quickly lead to a wrongful conviction if not handled with a great attention. A judge may not refer only to his sovereign appreciation but should look at the totality of the circumstances surrounding the infringement acts or offense and other pieces of evidence which corroborate the confession. An Extrajudicial confession is referred to confession made to a police officer, prosecutor or to any other person. Anisuzzaman and Jahan Efat suggested that the rules of prudence would be used in the admissibility of an extra-judicial

confession, thus it should not be the basis of conviction unless corroborated materially.²²

In Rwandan legal system, there is not a provision as to whether an extra-judicial confession can be the basis of conviction or not. Even though, the fair trial guarantees, respect for human dignity and privacy, protection against inhumane or degrading treatment and the right to remain silent or not to incriminate oneself must be respected in court as well as in criminal investigation process. The Rwandan legal system provides the extrajudicial confession as only a motif of mitigation of penalties when before the commencement of prosecution, the suspect pleads guilty and sincerely seeks forgiveness from the victim and the Rwandan society and expresses remorse and repairs the damage caused as much as expected and in the case of the accused reports himself to a competent authority before or during the investigation process.²³

²⁰ Ottmar, K. (2015). True and False Confessions under Interrogation. *Journal for Police Science and Practice, International Edition*, 5: 39-55. at p.40.

²¹ During Gacaca court, some accused voluntary confess falsely without any external pressure but in aim to protect the real or the co accused. This has known on the term “*Kugura agasozi (To buy a hill)*” where a suspect who recognized himself to commit a crime of genocide, with the desire to aid and protect the real perpetrators, group of criminals, the co-accused or in aim **to conceal the truth**, confess to have committed alone the crime. Those co accused or real perpetrators of crime promised him the aid of his family, to help him in the court or other benefit. (Icyizere News Paper, a newspaper of National Commission for the Fight against Genocide, CNLG) n° 34 of July 2013, p.12.

²² Anisuzzaman, S, Efat S.I.J. (2015), Admissibility and evidentiary value of confession: conflicts and harmony between rules of law and rules of prudence in Bangladesh, India and Pakistan, *South East Asia Journal of Contemporary Business, Economics and Law*, 7(4):54-62, at page 48.

²³ Organic Law N ° 01/2012/OL of 02/05/2012 instituting the penal code, Article 77, 1, and 2.

The extrajudicial confession statements made in police and before prosecution authority are frequently retracted by the suspect. This situation would be motivated by different causes as treats, torture, inhuman or degrading treatments, inducement, promise or any other improper method, take account that those confessional statements are made while the suspect is in police custody governed by those police officials.²⁴ Even if the legislator has provided it as a mitigating circumstance, the Rwandan law does not provide the value of the extrajudicial confession of guilty made in the investigation phase, and how those statements would be evaluated by the courts on the decision of his admissibility as valuable evidence. The following analyses are focused on how the Rwandan courts consider and evaluate the extrajudicial confession.

²⁴ Article 2 of Ministerial Order No 01/Mininter/14 of 28/05/2014 Determining judicial police custody facilities provides that Judicial Policy custody facilities are established at Police stations and posts. Any person the judicial Police decides to prosecute while under detention must be detained in Judicial Police custody.

2. Admissibility and Evidentiary value of statements made to Rwandan police and prosecution authority amounting to confession

Rwandan law provides that a Judicial Police Officer²⁵ and prosecutor²⁶ have the primary responsibility to conduct a preliminary investigation. In this perspective, a Judicial Police Officer interrogates a suspect and make a written record of the statement made by the suspect.²⁷ When preliminary investigation is completed, the judicial police immediately submit a case file to the Public Prosecution.²⁸ In this phase, a suspect may confess to committing a crime before those authorities and then, in the court trial, reverse his statement alleging different reasons which have motivated him or her to confess.

3.1. When accused raised that the extra judicial confession has been obtained through torture or other mistreatments

Generally, a retracted confession is always open to suspicion; the court must be careful and make a great attention to the

²⁵ Law n° 30/2013 of 24/5/2013 relating to the code of criminal procedure, Article 21 paragraph 2.

²⁶ Ibid, Article 21 paragraph 3.

²⁷ Ibid, Article 25.

²⁸ Ibid, Article 43.

evaluation of those questionable confessions. However, in all the cases a confession cannot be regarded as involuntary simply because it has been retracted afterward.

As provided in Convention Against Torture, the torture is defined an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for with purposes to obtaining from him or a third person information or a confession inflicted by or with the consent or acquiescence of a public official or other person acting in an official capacity.²⁹ A suspect who is happened to be arrested by police has difficulty to prove that he has been tortured. In *Akimana and Other v. Prosecutor*,³⁰ a case of rape of a minor, two accused have retracted their confessional statements made in the police. They raised an issue that they have confessed of guilty with the aim of saving their lives because they had been tortured and maltreated by officials of police. The High Court has recognized the challenged confession as true and sentenced him to life imprisonment. The court held that the accused did not prove that they have been

tortured or maltreated by any person. In *Ndabaruzi Emmanuel v. Prosecutor*,³¹ the Supreme Court has rejected the plea of the accused who asked to do further investigations when he raised that his confessional statements in the police have been obtained through torture against him. The Supreme Court held that it is not necessary to do other investigations because the accused has confessed in police and has explained how he has committed the crime.

In those judgements, the accused stated in court that they had been tortured and forced to make confessions in police or during the preliminary investigation. However, the courts failed to investigate these allegations. Those courts held that the accused have not found the evidence of those maltreatments. It is idle to expect that an accused should produce definite proof about torture, beating or pressure done in police take account that those confessions have been made by the accused while they were in the custody of a police officer. Article 13 of the Convention against Torture, to which Rwanda is a party, provided that each State party must ensure that any individual who alleges that he has been subjected to

²⁹ United Nations Convention Against Torture of 1984, Article 1.

³⁰ *Akimana and Other v. Prosecutor*, High Court, case no RPA 0345/11/HC/KIG - RPA 0417/11/HC/KIG, judgment of 27 April 2012.

³¹ *Ndabaruzi Emmanuel v. Prosecutor*, Supreme Court, Case no RPAA 0086/09/CS, judgment of 08 July 2011.

torture in any territory under its jurisdiction has the right to complain to, and to have his case examined impartially by competent authorities.³² There is no need for a formal complaint to be lodged to trigger this obligation from the State.³³ In this perspective, it is obligatory on each Rwandan judge to make sure that the evidence admitted to the court has not been illegally obtained. Even if no complaint is made by an accused person, in the case of confession, judges should ask the prosecution to prove if such evidence was not obtained by torture or in other forms of ill-treatment.

As recommended with special Rapporteur for torture, in case of confessional statements made in investigation phase are retracted by accused during court trial, alleging that has been tortured or ill-treated in different forms, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the

³² The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention", Committee against Torture, *Blanco Abad v. Spain*, Communication No 59/1996, paragraph 8.6.

³³ *Ibid.*

confession was not obtained by unlawful means, including torture and similar ill-treatment.³⁴ Even if the Rwandan law of mode of administration of evidence provides that each party has the burden of proving the facts it alleges,³⁵ in case of torture and other ill-treatment, the court may refer to international customary law and convention against torture, taking account that the convention has been ratified by Rwanda³⁶ and is, therefore, part of Rwanda's domestic law and are binding on all persons and authorities in Rwanda in accordance with article 168³⁷ of the Constitution. In all the cases, an accused who was assisted by a lawyer during a preliminary investigation would not challenge the confessional statement as obtained by torture or other ill-treatment when it was made in presence of his council.

In sum, it is the right of the accused to have the confession obtained by torture

³⁴ E/CN.4/2003/68, para. 26., The Special Rapporteur for torture.

³⁵ Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 3.

³⁶ Law n° 002/2008 of 14 Jan 2008, authorizing the accession to the convention against torture and other cruel, inhuman or degrading treatments or punishments.

³⁷ Article 168 of the Rwanda Constitution of 2003 provides that "Upon publication in the Official Gazette, international treaties and agreements which have been duly ratified or approved have the force of law as national legislation".

being excluded and equally the duty of the court to exclude it even *suo moto*. When the accused alleged that the confession was obtained as a result of torture, violence or other forms of physical compulsion, the court trial has to exclude the confession statements unless the prosecution adduces such evidence as will satisfy the judge beyond reasonable doubt that the confession was not so obtained. The Human Rights Commission has also stated that an involuntary confession made as a result of ill-treatment is unacceptable.³⁸ This exclusion is important for the reason that the accused may confess the guilt without regard to the truth in order to avoid the danger of torture or other ill-treatment and in order to save his life.

3.2. Without torture or in other circumstances

A confession is one of the most powerful types of evidence that exists. This conclusive proof, when are not voluntarily, can be gotten without physical or mental coercion but with other different forms, for instance, in the case of inducement, promises, fear, the accused's health, age, as well as intelligence. Thus when an accused confesses in a court trial or when has confessed out of court, the firsts

impressions of the best judge or court trial could be always to treat extra-judicial confession as suspicious evidence. In case, the court finds that the accused has confessed to police or in prosecution without any ill-treatment or other influence, the court would also evaluate the circumstances which surround the confessional statements. In the modalities for conducting the hearing in Rwanda, in the commencement of hearing in a criminal case, the court registrar reads the offense alleged against an accused, then the court asks the accused whether he pleads guilty or not guilty.³⁹ When he pleads guilty, the legislator has not provided that the accused is automatically guilty of the offense or the Prosecution remains exempt to provide evidence on his side. In this perspective, in case of the accused plead guilty or not, the Public Prosecution would present evidence proving the guilt of the accused and the accused explains the circumstances in which he committed the offense.⁴⁰ The accused even in police and prosecution has voluntarily confessed and then pleads guilty in the court trial, can be acquitted. In *Migambi v. Prosecutor*,⁴¹ even if the accused has confessed of guilty of a crime

³⁸ Communication 139 of 1983, UN.Doc.Supp.40 (A40/40) 1985, *Conteris v Uruguay*.

³⁹ Ibid (n 25), Article 153, paragraph 2 and 3.

⁴⁰ Ibid, Article 153, paragraph 4 and 5.

⁴¹ *Migambi v. Prosecutor*, Supreme Court, Case no RPAA0127/11/CS, judgment of 21 Jun 2013.

of genocide ideology before the court trial, the Supreme Court has passed to examine the confessional statements and ruled that the accused is not guilty of the crime of genocide ideology. The court held that the confessional statements of Migambi could not be qualified as a constituent element of the crime of genocide ideology.

When voluntary confessional statements are retracted, even in appeal level, the court trial have to pass to its evaluation and to know the surrounding reasoning of this situation. In *Nsabumuhe v. Prosecutor*,⁴² a case of poisoning, Nsabumuhe has confessed to police and in the prosecution that she poisoned different children of members of her family. The Intermediate Court and High Court had convicted her to life imprisonment based on her voluntary confessional statements. Nsabumuhe in Supreme Court has retracted his confession statement; the Supreme Court held that even the accused voluntarily confessed of guilty in prosecution, there is not any evidence which shows that the said victims have been really poisoned, because there are not the exhibits of those poisoning substances and other pieces of evidence which prove beyond any doubt that the accused has

committed the offences charged. In this case, the courts convicted the accused to commit the crime of poisoning without passing to the examination and evaluating the confessional statement. In all the same, a conviction on a retracted or no retracted confessional statement would be supplemented with independent evidence which makes the confessional statement true and consistent. It is wrong for the Rwandan courts or judges to have acted on the extra-confessional statements without testing the truth thereof. The court has to properly evaluate all pieces of evidence placed before him, find outside the confession some evidence be it slight of circumstances which make it probable that the confession was true.

The Supreme Court laid down certain guidelines in this regard, which require being followed by the courts in such cases, take account that the judgments and decisions of the Supreme Court are binding on all other lower courts of the country.⁴³ In *Sgt Ntaganira and Others v. Prosecutor*, the court ruled that when an accused retracts or repudiates the confessional statements made out of court, does not mean that those statements are automatically not true or false, the court

⁴² *Nsabumuhe v. Prosecutor*, Supreme Court, Case no RPA 0064/08/CS, judgment of 06 March 2009.

⁴³ Organic Law n° 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, Article 47.

trial must pass to their test and evaluation of their credibility.⁴⁴ The Court must be cautious in appreciating the evidence and can convict an accused on the basis of the extra-judicial confession only if such evidence inspires confidence and is corroborated by other materials.⁴⁵ Hence, a conviction based solely on an extrajudicial confession should be clear, specific and unambiguous. A retracted confession would create in mind of court trial the rule of prudence which suggests that an accused should not be convicted on the basis of his confession without any satisfactory corroborative evidence.

The prosecution has the burden of proving beyond a reasonable doubt that the confession was made voluntarily, and its causality and real relation to the charge against the defendant. The New Zealand Evidence act provides that where the complaint is that the confession was obtained as a result of a promise or some other inducement, the judge will only exclude the statement if satisfied on a balance of probabilities that the resulting confession is, therefore, likely to be untrue

or misleading.⁴⁶ The Rwandan courts and tribunals trial must pay attention to the admissibility of the confessional statements and satisfy himself that it was voluntary before admitting it into evidence, if admitted, the court trial decides what weight and value to give to the confessional statements.

3. Admissibility and Evidentiary value of extra-judicial confession made by a co-accused against another co-accused

By principle, a voluntary confession is evidence only against the person who made it and not against his co-accused. Under 2004 Rwandan Evidence Act, in its article 111, it is provided that an extrajudicial confessional statement by one accused is an admission or confession on his side only and does not bind the other co-accused. In its strict legal sense, the evidence is defined as the demonstration of the truth of fact,⁴⁷ therefore the confession of a co-accused does not come within this definition.

Even those, the confessional statements of a co-accused would not be considered by the criminal court as a piece of evidence

⁴⁴ *Sgt Ntaganira and Others v. Prosecutor*, Supreme Court, Case no RPAA 0010/06/CS - RPAA 0011/06/CS - RPAA 0012/06/CS, judgment of 18 July 2008.

⁴⁵ *Ibid.*

⁴⁶ New Zealand, 1908 Evidence Act, Section 20 as substituted by Section 3 of the Evidence Amendment Act 1950.

⁴⁷ Law N° 15/2004 of 12/06/2004 relating to evidence and its production, Article 2.

without any values in a case given. In *Prosecutor v. Nduguyangu and Other*,⁴⁸ the accused have been prosecuted for a murder, in investigation stage and before the court trial, Nduguyangu has pleaded of guilty. In his confessional statements, Nduguyangu explains that Karemera has helped him in this bad action in procuring a firearm weapon and has promised to give him five hundred Rwandan Franc (500.000 Frw) after finishing the action. The Supreme Court held that even the statements of Nduguyangu might be considered by the court to assist it in arriving at the truth, cannot be made the foundation of conviction in case of lack of other valuable pieces of evidence, it could be used as corroboration if there are other materials brought in support of the charge.⁴⁹ It would be dangerous to convict acting on the confessional statements of a co-accused alone. The Confession of a co-accused is a weak type of evidence against other accused. The court, as it was done in *Prosecutor v. Nduguyangu and Other*, can be put into the balance and evaluated with the other pieces of evidence. The confession of a co-accused can be used only in support of other evidence and

cannot be alone made the basis of a conviction.

Moreover, in the absence of any other substantive evidence, Rwandan courts and tribunals, as well as other courts of another country, cannot base their judgment of conviction only on the confession of a co-accused, be it an extra-judicial confession or a judicial confession. In case of evidence against a co-accused is sufficient to base a conviction, confessional statement of the co-accused may be treated as a corroboration for that evidence and the guarantee to the conclusion of guilt which the court or tribunal has reached on the said evidence. It is in this vein that the Indian Supreme Court in the case of *Pancho v. State of Haryana*,⁵⁰ held that confessions of a co-accused are not the substantive piece of evidence and that it can only be used to confirm the conclusion drawn from other pieces of evidence in a criminal trial.

In other circumstances, a co-accused might confess himself and be a witness for or against an accused person. Article 57 of 2013 Criminal Procedure provides that any person having participated in the commission of an offense may be heard as

⁴⁸ *Prosecutor v. Nduguyangu and Other*, Supreme Court, Case no RPA 0330/10/CS, judgment of 16 September 2011.

⁴⁹ *Ibid.* at p.5.

⁵⁰ *Pancho v. State of Haryana*, Supreme court of India, 2011, 10 SCC 165.

a witness. If any co-accused becomes a witness, his testimony takes effect under the tests ordinarily applicable to the evidence of a witness. In this case, a co-accused may be subjected to cross-examination by the prosecution and the accused as provided by article 153 of Law relating to the code of criminal procedure. Furthermore, in case of false testimony, he must be prosecuted for the crime of giving false testimony provided by the article 579 of the organic law instituting the penal code.⁵¹ However, the co-accused would not be forced to be a witness, he has to take this step only on his own consideration. Therefore, the disposition of Rwandan criminal code which provides punishment to any person who voluntarily refuses to give evidence to judicial authorities cannot be applicable to the accused.⁵² This would be motivated on the one hand by the right to remain silent and the other hand the privilege against self-incrimination, which precludes a person from being required to testify against himself at trial.⁵³ The court may evaluate

⁵¹ Article 579 of organic law instituting the penal code Any person who gives false testimony before judicial organs shall be liable to a term of imprisonment of two (2) years to five (5) years and a fine of one hundred thousand (100,000) to one million (1,000,000) Rwandan francs.

⁵² Organic Law of n° 01/2012/OL of 02/05/2012 instituting the penal code, Article 576.

⁵³ Lyndon, M, The 325, the Supreme Court and Criminal code and Ors, the Supreme Court of Canada case compilation, 2015, at page 4790.

differently the admissibility of confessional statements and weight and value of testimony. In any case, an alleged extra-judicial confession of the co-accused cannot be treated as substantive evidence against the other accused.

4. Conclusion

It comes to light that a confession is a substantive evidence against its maker if it has been voluntarily done and suffers from no legal infirmity. In criminal proceedings, the confession is the best evidence and is of greater force or value than all other proofs. The Rwandan law refers confession to the statements of accused makes before the court and such statements serve as plaintiff arguments; about the extrajudicial confession of accused, extrajudicial confession of a co-accused, there is not a provision as to whether can be the basis of conviction or not. This situation may create a legal loophole to the protection of accused because of the different views and considerations of extrajudicial confession by Rwandan courts and tribunals.

Normally a confession made under torture, degrading treatment or other forms of coercion, is inadmissible. When an accused raised that he has been tortured or ill-threatened the court could not ask him the proof of the veracity of his statement

but the burden of proving that the accused has not been tortured or ill-threatened shifts to the prosecution. In other circumstances, a retracted confession would create in mind of court trial the rule of prudence; the court trial must pass to their test and evaluation of their credibility as it has been recently clearly developed by the Supreme Court in *Sgt Ntaganira and Others v. Prosecutor*. Thus a conviction on a retracted or no retracted confessional statement would be sustained with independent pieces of evidence which corroborates it and makes the confessional statement true and reliable.

What is needed now, first of all, the legislator has also to amend article 110 of the 2004 Rwandan Law on Evidence in line with the convention against torture, including by expressly stating that confessions obtained by mental, as well as physical, torture are inadmissible in any proceedings, and by ensuring that the burden is on the State to prove that such statements have been given of the person's free will. Secondary the legislator could also expressly include in the provisions of Evidence Act that confessions whether extrajudicial as well as judicial must pass to the exam of court trial and must be corroborated with other reliable pieces of evidence as well as the confession and

extrajudicial confession of a co accused. Lastly, is needed the judges' awareness on avoiding the use of non-examined confessional statements as sufficient evidence to convict an accused person. Such procedures invite coercion and force to extract such a confession.

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