



Retracted Confessions in Nepal: A Critical Study of Judicial Treatment and Procedural Safeguards

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Received: March 14, 2025

Revised & Accepted: April 15, 2025

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Abstract

Confession has historically been treated as one of the most powerful forms of evidence in criminal proceedings. However, when a confession is retracted, courts face the challenging task of assessing its voluntariness, reliability, and evidentiary weight. This research examines how retracted confessions are handled within the Nepalese criminal justice system exploring the tension between protecting defendants' rights against coerced confessions and ensuring that justice is not undermined by false retractions. Drawing upon doctrinal research, psychological theories of confession, and Nepalese statutory requirements, the study evaluates whether current judicial approaches adequately safeguard suspects' rights while balancing the needs of justice. The findings highlight procedural gaps, the risks associated with coerced or compliant confessions, and the importance of corroborative evidence. The paper suggests reforms aimed at improving the integrity of confession evidence in Nepal.

Keywords: Confession, Coercion, retracted confession, voluntariness.

Introduction

In the criminal justice system, a confession is often viewed as one of the most powerful forms of evidence. A confession is a statement in which a person admits to committing a crime, either in full or in part (Kassin, 1997). Traditionally, courts have treated confessions as highly reliable, assuming that no innocent person would admit guilt unless the admission was true. However, global research and case experiences reveal that not all confessions are genuine. Suspects, especially vulnerable ones, sometimes confess falsely due to psychological pressure, coercion, fear, or misunderstanding of the situation they are in (Villalobos & Davis, 2016).



The legal system of Nepal, like many others, recognizes this danger. The Evidence Act, 2031 (Evidence Act, 2031, 1974) mandates that only voluntary confessions those made without threat, inducement, or coercion are admissible in court. Despite this clear legal standard, there are many practical challenges. Nepal does not require police interrogations to be recorded, and suspects often lack immediate access to legal counsel during questioning. These gaps create conditions where coercion, both physical and psychological, can occur without proper accountability.

Retracted confessions where a suspect confesses initially but later denies the confession at trial present a particularly complex issue (Khotele & Sharma, 2023). They raise important questions: Was the initial confession voluntary or coerced? Can a later retraction be trusted? Should courts rely more heavily on other evidence when a confession is disputed? Courts in Nepal have grappled with these questions, especially in serious offenses involving sexual violence, drug crimes, or human trafficking.

This research focuses specifically on retracted confessions in Nepalese criminal cases. By analyzing how courts have evaluated such confessions considering psychological theories of why suspects confess falsely, the standards of corroboration, and systemic protections the study seeks to understand whether Nepal's approach adequately protects against wrongful convictions. Confessions must be carefully scrutinized not only for what they claim but also for how they are obtained and supported by other evidence.

In doing so, this research highlights the vital need for procedural safeguards, a deeper understanding of human psychology, and a balanced approach to confession evidence that neither blindly trusts admissions nor unjustly disregards them.

Research Objectives

- To examine how Nepalese courts, treat retracted confessions and assess their reliability.
- To apply psychological theories to understand the reasons behind initial confessions and later retractions.
- To identify procedural weaknesses and suggest reforms to strengthen protections against coerced confessions in Nepal.

Literature Review

Confession evidence occupies a pivotal role in criminal adjudication, intertwining legal doctrine with psychological science. Confession has traditionally been considered the “queen of evidence” in criminal law. However, decades of empirical and psychological research have shown that confession especially when obtained under custodial pressure can often be misleading, involuntary, or outright false (Tanner, 2024).

Across jurisdictions, courts distinguish voluntary confessions, genuine admissions of guilt from those arising under undue pressure. Among the latter, scholars identify coerced-compliant confessions, where innocent suspects confess to escape an aversive interrogation environment, and coerced-internalized confessions, in which intense suggestion leads suspects to believe they committed crimes they did not (GH, 2004). Psychological research demonstrates that tactics such as minimization (“it’ll go easier if you confess”) and maximization (“we already



have evidence against you”) can overwhelm a suspect’s capacity to resist, especially without counsel or recording of interrogations (Cole, Teboul, Zulawski, Wicklander, & Sturman, 2013). Simultaneously, confirmation bias in investigation encourages law enforcement to interpret ambiguous behavior as proof of guilt, creating a feedback loop that intensifies pressure until a confession seems to “fit” the theory (Dror, et al., 2021).

To safeguard against unreliable confessions, Nepal’s Evidence Act, 2031 BS, demands voluntariness and independent corroboration for admissibility (Evidence Act, 2031, 1974), while the Istanbul Protocol though not binding recommends meticulous documentation of interrogation conditions to deter coercion (Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment , 2022). Yet, in practice, mandatory audio/video recording and guaranteed counsel remain aspirational in Nepal, leaving procedural protections uneven. Empirical studies on confession reliability are extensive in Western contexts but remain scarce in Nepal, yielding critical gaps concerning local interrogation practices, the prevalence of retracted confessions, and the real-world impact of proposed reforms.

Typology of Confessions

Voluntary vs. Coerced Confessions

Legal and psychological scholarship consistently separates voluntary confessions, which stem from genuine remorse or moral compulsion, from coerced confessions, which result from external pressures (GH, 2004). Voluntary statements are typically considered reliable because the confessant acknowledges factual guilt. In contrast, coerced confessions, be they compliant or internalized carry a high risk of error, as they reflect situational factors rather than factual admissions.

Coerced-Compliant vs. Coerced-Internalized

Coerced-compliant confessions occur when innocent suspects, under intense interrogation stress and without legal counsel, confess strategically to end the ordeal. Kassin & Kiechel’s laboratory studies found that up to 20 percent of participants falsely confessed under minimal pressures (Cole, Teboul, Zulawski, Wicklander, & Sturman, 2013).

Coerced-internalized confessions involve suspects actually coming to believe they committed a crime due to suggestive questioning and memory distortion. Such phenomena are well documented in high-profile miscarriages of justice (Henkel & Coffman, 2004).

Psychological Mechanisms

Compliance and Suggestibility

Compliance refers to the tendency to acquiesce to authority, especially in stressful settings. Suspects experiencing fatigue, fear of violence, or misunderstanding of rights are particularly prone to comply with interrogators’ demands (May, 2004). Researchers note that juveniles and individuals with cognitive impairments exhibit heightened suggestibility, making them vulnerable to false admissions (Redlich, 2010).

Cognitive Dissonance and Minimization/Maximization



Interrogative techniques exploit cognitive dissonance, where suspects resolve internal conflict by aligning their narrative with interrogators' offers. Minimization tactics downplay the moral severity of the crime ("we understand why you did it"), while maximization tactics exaggerate consequences ("you'll face the maximum sentence"). Both drive suspects toward confession as an apparently rational way to alleviate psychological tension (Luintel & Timsina, 2024).

Investigative and Cognitive Biases

Confirmation Bias in Interrogations

Confirmation bias arises when investigators, once convinced of a suspect's guilt, interpret every ambiguous remark or behavior as confirmation (Lidén, 2020). This bias can lead to "tunnel vision," where alternative suspects or explanations are ignored, and pressures escalate until a confession aligns with investigators' theory.

Behavioral Confirmation and Tunnel Vision

Beyond cognitive bias, behavioral confirmation—expectations that lead interrogators to treat suspects differently can produce self-fulfilling prophecies. For example, a suspect perceived as "shifty" may be subject to harsher tactics, increasing stress and the likelihood of compliance. This cycle reinforces the misconception of guilt and undermines objective evidence evaluation (Elaad, 2022).

Interrogation Techniques and Alternatives

The Reid Technique

The Reid Technique, a nine-step confrontational method popular in the U.S., employs isolation, confrontation, and minimization/maximization. Studies link its use to high rates of false confession, particularly among vulnerable populations (Moore & Fitzsimmons, 2011). Critics argue it creates coercive environments antithetical to reliable fact-finding.

Rapport-Based Approaches

Conversely, rapport-based or PEACE models emphasizing open-ended questions, active listening, and minimal confrontation show promise in reducing false admissions. Field experiments indicate lower retraction rates and higher accuracy under non-coercive frameworks (Brimbal, Meissner, Kleinman, & Phillips, 2021)

Despite a growing global awareness about the psychological unreliability of confessions obtained under custodial pressure, Nepalese courts have yet to doctrinally engage with the psychological or behavioral indicators that suggest involuntariness. There is no scholarly work in Nepal that:

Applies psychological theory to doctrinal case analysis of retracted confessions.

Methodology

This research adopts a qualitative case study methodology focusing on the judicial treatment of retracted confessions in selected criminal cases in Nepal. The study aims to understand how initial confessions, later retracted at trial, were evaluated by courts in light of corroborating evidence and psychological theories of confession.

Research Design

The research follows a qualitative, case-based design.



- It analyzes selected judicial decisions of Nepalese courts (District Court, High Court, and Supreme Court) where the defendants initially confessed to crimes but later retracted their confessions.
- The study applies psychological theories related to false confessions (such as Rational Choice Theory, Compliance Theory, and Suggestibility) to explain the possible reasons behind confession and retraction.
- The research emphasizes case facts, witness testimonies, medical evidence, judicial reasoning, and final verdicts rather than statutory interpretation.

Sources of Data

- Primary Sources:
 - Final judgments, case files, and factual narratives from:
 - *Nepal Government v. Upendra Mukhiya Bin*
 - *Nepal Government v. Ajay Kumar Kamat et al.*
 - *Nepal Government v. Sanju Shrestha et al.*
 - *Nepal Government v. Arjun B.K.*
 - *Bhawani Rajbanshi v. Nepal Government.*
- Secondary Sources:
 - Academic articles on psychology of confessions.
 - Research reports and international materials (e.g., Istanbul Protocol) on standards for evaluating confession reliability.

Case Selection Rationale

The cases were selected through purposive sampling because:

- Each involved an initial confession followed by retraction.
- Courts in each case had to determine whether the retracted confession could still be relied upon.
- The selected cases reflect a range of serious offenses (sexual assault, attempted murder, human trafficking, and drug trafficking), offering diversity in context and judicial reasoning.

Limitations

- Limited access to full interrogation records: As Nepalese criminal investigations do not routinely record custodial interrogations, analysis relies mainly on defendants' claims of coercion and courts' interpretation of those claims.
- Reliance on judicial findings: The research is based on court documents; independent verification of the events outside the judicial process was not possible.
- Jurisdictional Limitations: Although comparative references are made to international standards, the analysis remains rooted in Nepal's judicial context.

Ethical Considerations

- Confidentiality: Minor victims are referred to using pseudonyms or initials (e.g., "Ka") to maintain privacy and dignity.



- **Objective Approach:** The research maintains neutrality by fairly presenting both the prosecution's reliance on confessions and the defense's claims of coercion.

Analysis

Nepal Government v. Ajay Kumar Kamat et.al (Attempt to murder, 2019)

On 2016/03/02 Jitendra Sahni and his friend Sanjay Sah attended a funeral at the Singysa Khola ghat in Morang District. After the ceremony, they stopped for tea at Hatkhola market. According to eyewitnesses and medical reports, as they were leaving, they were ambushed by Vikram Katuwal, Ajay Kumar Kamat, Mohammad Arman, and two others. The attackers used abusive language and quickly grabbed the two men. Arman then stabbed Jitendra in the back and abdomen, and Sanjay in the back and side, inflicting serious but non-fatal injuries.

Despite the commotion, nearby residents did not intervene until they heard cries for help. By the time anyone reacted, the attackers had fled. The wounded men were rushed to Golden Hospital for treatment.

During the initial police investigation, Katuwal and Kamat both gave signed statements admitting they had held down the victims while Arman stabbed them—key evidence that helped build the prosecution's case. However, during the trial, both men recanted: Kamat claimed his confession had been forced, and Katuwal denied any involvement. As a result, the Morang District Court convicted Arman alone of attempted murder under Section 15 of the Muluki Ain, while acquitting Katuwal and Kamat due to insufficient credible evidence.

Coerced-Compliant False Confessions

Coerced-compliant confessions arise when innocent suspects, under the strain of custodial interrogation, admit guilt to end an aversive situation rather than from genuine culpability. In this case, Katuwal and Kamat's immediate admissions at the police station followed by complete denials at trial fit the classic coerced-compliant profile. The interrogation conditions in Nepal allow extended detention without guaranteed counsel, incentivizing "quick admissions" to secure release from questioning, not because the suspects actually believed they committed the crime.

Procedural Safeguards and Legal Standards

Nepal's Evidence Act, 2031 requires that confessions be made voluntarily: free of inducement, threat, or promise to be admissible. Internationally, the Istanbul Protocol mandates careful documentation of interrogation conditions and prohibits torture or coercion in eliciting statements. Yet, without mandatory recording or counsel, these safeguards remain theoretical in Nepal, leaving custodial statements vulnerable to the very biases and pressures that produce false confessions.

Nepal government v. Sanju Shrestha et.al (Attempt to murder, 2019)

On 2007/06/17 at approximately 7:00 p.m., near the Buddha Temple in Sigal, Kathmandu Metropolitan Ward No. 28, a group of 10-12 assailants led by Sanju Shrestha, Shiv Lama, Amrit Maharjan, and Paras Shahi surrounded 21-year-old Manish Maharjan as he sat drinking tea, and proceeded to attack him with a khukuri (curved knife), iron rod, and sword, inflicting deep stab wounds to his back, head, and left arm and rendering him near death. Bystanders



eventually intervened; Manish, bleeding profusely, was transported by ambulance to Bir Hospital, where medical records confirmed multiple non-fatal “stab injuries” but noted he survived due to timely treatment. In his deposition to police officer, Sanju Shrestha admitted he had accompanied Shiv Lama and others to the scene but denied wielding any weapon himself, stating only that he witnessed the attack under peer pressure. However, at trial he retracted fully, claiming he neither planned nor participated in the assault, and insisted his initial statement was involuntary. The Kathmandu District Court ultimately reclassified the charge as simple assault under Section 27 of the Government Cases Act 2049 BS effectively treating it as non-fatal battery and acquitted Sanju Shrestha for lack of evidence that he bore murderous intent.

Coerced-Compliant False Confessions

In the Sigal case, Sanju Shrestha’s immediate admission to police “I accompanied them but didn’t stab” followed by a full denial at trial mirrors the classic coerced-compliant pattern, where a suspect makes a strategic confession under duress and later retracts when in a less coercive environment. Further, the acquittal by the court substantiates the deposition of being coerced.

Nepal government v. Arjun B.K. (Narcotic Drug , 2021)

On 2014/05/17 during the investigation of a theft, police in Pokhara Ward 4 arrested five suspects Som Bahadur Pun, Dhan Bahadur Gautam, Arjun B.K., Bimal Pande, and Jivan Nepali at Siddhartha Chowk and searched their lodgings, where they seized a white plastic package containing four grams of a brown substance later confirmed to be heroin by the Central Police Forensic Science Laboratory. They also recovered items the defendants and their co-suspects admitted were proceeds of theft.

In the initial police statements, each defendant acknowledged that the heroin was hidden in their room for the purposes of buying, consuming, and selling among friends at doses of approximately NPR 300–400 each, and that they had sold any leftovers to local youths. At trial, however, all five retracted those admissions, insisting they had been forced under threat and without proper explanation to sign statements they did not make; none presented any independent evidence to challenge the seizure or prove lawful possession. The Kaski District Court initially convicted them under the trafficking provisions of the Narcotic Drugs (Control) Act, 2033 BS (Sections 14(g)(1) sentencing each to five years’ imprisonment and a NPR 5,000 fine with additional penalties under Section 16 for repeat offenders and juvenile-adjusted terms under the Children’s Act, 2048 BS; Hark Sunar remained at large and his case was stayed under procedural rules. On appeal, the High Court of Pokhara reduced the convictions to simple possession Section 4(g) in light of the small four-gram quantity, imposing one year and NPR 10,000 on each adult defendant (plus an extra year and NPR 5,000 on Gautam) under Section 14(1)(ॐ) and suspending action against Sunar; the Supreme Court later affirmed this reclassification and declined further confiscation of alleged drug-trafficking proceeds.



Coerced-Compliant False Confession

Each defendant admitted at the police station that they and their peers had purchased, consumed, and hidden heroin for sale but at trial all claimed those admissions were coerced: they cited fear, threats, and signing paper they did not read or understand. Nepal's Narcotic Drugs (Control) Act, Section 12, places the burden on the accused to prove lawful possession once drugs are seized; here, none produced independent proof, yet their trial-level denials undercut the reliability of the initial statements, consistent with the coerced-compliant pattern. The stark disconnect between admission under pressure and outright denial in open court strongly suggests their police confessions were “merely to end the interrogation,” not genuine acknowledgments of guilt.

Bhawani Rajbanshi v. Nepal Government (Human Trafficking and Transportation, 2022)

On 2 April 2013, Jumrati Baitha, Ramlakhan Yadav, Mausam Thatal, Bhawani Rajbanshi, and Roshan Mahara lured five schoolgirls (aged 15–18) from Anarmani, Jhapa District, with promises of dance work at NPR 1,200 per day, then secretly transported them by bus to Itahari (Sunsari District) and even purchased onward tickets to Janakpur—without parental consent—before alarmed family members and police intercepted the group, rescued the girls, and arrested all five. Mausam Thatal initially confessed to police but later retracted at trial.

The Jhapa District Court treated it as attempted cross-border trafficking under the Human Trafficking and Transportation (Control) Act, 2064 BS, sentencing Mahara (then under 18) to 7½ years' imprisonment and a NPR 50,000 fine, and each adult defendant to 8 years' imprisonment and a NPR 50,000 fine, plus NPR 150,000 restitution.

On appeal, the Ilam High Court recharacterized the offense as domestic trafficking increasing the adults' terms to 10 years and Mahara's to 5 years (each with a NPR 50,000 fine) while preserving the restitution award. Finally, the Supreme Court held that the correct charge was domestic exploitation reducing Baitha, Thatal, and Rajbanshi's sentences to two years (with time served) and Mahara's to one year four months (two-thirds of the adult term) ordered their release, while maintaining the original restitution to the victims.

Voluntariness and Reliability

Under Nepal's Evidence Act, a confession is only admissible if made voluntarily—free from duress, coercion, or undue influence. Mausam Thatal confessed to investigators that he “lured the girls with the promise of good pay for dance work”. Courts evaluate voluntariness by a “totality of the circumstances” test: minor inducements or deception do not automatically invalidate a confession if there is no proof of coercive tactics. Here, there is no record of physical force, threats, or denial of counsel; thus, the court reasonably found Thatal's statement voluntary and reliable.

Corroboration Requirement

Legal doctrine holds that an extra-judicial confession, especially one later retracted, must be corroborated by independent evidence before forming the sole basis of conviction. In this case, Thatal's confession was supported by:

Victims' consistent depositions describing the lure and travel to Itahari.



Bus tickets and surveillance placing the parties together.

Multiple eyewitness statements (family and police reports).

This web of corroboration strengthens the confession's probative value and meets the safeguard requirements against wrongful convictions based on uncorroborated admissions.

Impact of Retraction

A confession's retraction does not render it inadmissible if the original statement was voluntary and corroborated. Courts distinguish between "mere afterthought" retractions and substantive rebuttals of fact. Thatal retracted at trial ("I was only helping to arrange cultural performances, not trafficking"), but did not produce evidence of coercion or mistake. Under established principle, once voluntariness and corroboration are met, retraction raises credibility issues for the judge but does not automatically erase the confession's evidentiary weight.

Totality of the Circumstances

There is no indication Thatal was misled about his rights or subjected to impermissible police tactics. Standard booking and interrogation procedures were followed; no working arrangement to violate his rights is alleged.

Nepal Government v. Upendra Mukhiya Bin (Unnatural Sex, 2021)

The case centers on allegations from 2071/2/29, wherein an 8-year-old boy identified as 'Ka' was reportedly abducted and subjected to unnatural sexual acts in a sugarcane field. The complaint detailed the forcible nature of the abduction and assault, with the victim's account supported by medical findings that confirmed anal injuries consistent with sodomy. Initially, Upendra Mukhiya Bin provided a confession to the police, admitting his involvement and implicating two co-defendants. This confession became a significant piece of evidence for the prosecution. However, during the trial phase, Upendra Mukhiya Bin retracted this confession, asserting that it was coerced by the police through threats and physical abuse. He further claimed the statement was fabricated and presented an alibi, suggesting the charges were rooted in a pre-existing family dispute.

Beyond the contested confession, the prosecution presented corroborative evidence. A medical report substantiated the victim's claims by detailing physical injuries consistent with the alleged unnatural assault. Additionally, three witnesses testified in court, stating they had observed the abduction of the young boy. The victim, 'Ka', also formally identified Upendra Mukhiya Bin as one of the perpetrators during an identification process. The Parsa District Court ultimately convicted Upendra Mukhiya Bin under Sections 3(1) (forcible rape) and 9(a) (unnatural acts on a minor) of Nepal's Civil Code. In its decision, the court acknowledged Upendra's retraction but deemed his initial confession credible, citing its alignment with the medical evidence and witness testimonies, alongside the victim's detailed testimony and identification. He was sentenced to 10 years of imprisonment and ordered to pay compensation, while the cases against the absconding co-defendants were deferred.

The High Court (Janakpur Bench) subsequently upheld this conviction, placing emphasis on the victim's account and the medical findings, while rejecting the application of Section 3a (gang rape of women) due to the male victim. Finally, the Supreme Court of Nepal reviewed



the case, affirming the conviction under Sections 3(1) and 9(a). However, the apex court ruled that the High Court had erred in not mandating an additional one-year sentence as per Section 9a. Nevertheless, considering Upendra's age of 16 at the time of the offense, the Supreme Court applied the provisions of the Children's Act, 2075, and reduced the total sentence to 7 years and 4 months. Throughout the judicial process, the courts validated the admissibility of Upendra's initial confession despite his retraction, consistently citing its corroboration with the medical reports, witness statements, and the victim's testimony.

Voluntariness vs. Coercion (Coerced-Compliant Confessions)

Upendra Mukhiya Bin's claim that he only signed his police statement after being "threatened with death" and physically intimidated fits the classic coerced-compliant profile, where an innocent person confesses simply to end an aversive interrogation. Under Nepal's Evidence Act, 2031 Section 27(2) (Evidence Act, 2031, 1974), a confession is admissible only if "made voluntarily, without any inducement, threat or promise." Both the District and High Courts applied the "totality of the circumstances" test and concluded that no direct proof of torture or promise was brought forward, so they deemed his initial statement voluntary. That said, the absence of mandatory audio-visual recording or counsel safeguards recommended by the Istanbul Protocol leaves room for subtle coercion to go undetected.

Corroboration requirement

Once voluntariness is established, retracted confessions may still stand provided they are independently corroborated. Here, the courts pointed to the victim's detailed testimony of abduction and assault, medical findings of anal lacerations consistent with sodomy, and eyewitness statements corroborating the abduction. This mirrors common law principles where a properly voluntary confession may survive recantation if buttressed by objective proof.

Juvenile Vulnerabilities and Procedural safeguards

At sixteen, Upendra fell into the highest-risk group for suggestibility under police pressure. While the Supreme Court applied a reduced sentence under the Act, this procedural gap contravenes both Nepal's own statute and international standards (UN Beijing Rules) calling for special protections for child suspects. Mandating counsel and recorded questioning would align practice with written law and help safeguard youths from compliant confessions.

Legal and Systemic Implications

The High Court's refusal to apply Section 3a (gang-rape of women) against a male victim highlights a statutory blind spot; Nepal's Law Commission has recommended gender-neutral sexual-violence language for precisely this reason. Yet without transparency in interrogation practices, even corroborated confessions risk being tainted by unseen pressures.



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