

An Analysis of the Nature of Confessions and Justifications of Co-defendants

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Abstract

As an independent form of evidence, the confession and defense of the co-defendants play an important role in the identification of the facts of the case and the investigation of criminal acts in criminal proceedings. However, there are theoretical disputes and practical contradictions in the application of the statements and explanations of the co-defendants and their nature has always been highly controversial. Whether the confession and defense of the co-defendants have independent probative force will directly lead to their being classified into different types of evidence-"confession and defense of criminal suspects and defendants" and "testimony of witnesses" in judicial practice, and lead to different judicial certification procedures, thus affecting the smooth achievement of criminal proceedings. The above-mentioned two kinds of evidence are two forms of evidence with different evidence values stipulated in the Criminal Procedure Law. Their natures are different, and there are differences in obtaining evidence, adducing evidence and cross-examination. Therefore, in theory, accurate characterization of the statements and explanations of the co-defendants can better play the role of such evidence in judicial practice.

Keywords

Confession and defense, Mutual confirmation, Rules of evidence.

1. 1. DIFFICULTIES IN IDENTIFYING THE NATURE OF CONFESSIONS AND JUSTIFICATIONS OF CO-DEFENDANTS

Although the law has never clearly defined and approved the rule of experience that "solitary evidence cannot be finalized", it is a tacit rule of evidence in criminal justice practice. The rule of corroboration of confession stipulated in Article 53 of China's Criminal Procedure Law, namely, "If only the defendant's confession is available and there is no other evidence, the defendant cannot be found guilty and punished", belongs to the rule of corroboration of confession. Its original legislative intent is to protect human rights, to prevent excessive reliance on the defendant's confession and neglect the collection of other evidence. In addition, the current proof mode of our country's judicial proof embodies the judicial spirit of "solitary proof cannot be finalized", which also forces us to define the nature of the confession and defense of the co-accused from another angle. Modern litigation takes evidence as its cornerstone, requiring that the determination of the facts of a case in criminal proceedings must rely on evidence, without which the facts of the case cannot be determined, emphasizing the "principle of judging evidence". Any kind of strategic thinking embodies the basic principle of making special reflections on special objects. The distinction between things is the premise of making strategies. The identification of the nature of the co-defendant will directly lead to the question of whether the case can be judged when only the defendant makes a statement.

Different choices will also directly affect the question of whether the judgment results will conflict with the relevant theories of criminal proceedings.

1.1. Confession Model—The Guilty Are At Large

Evidence is the organic unity of evidence facts and evidence carriers (also known as the manifestation of evidence). The legal form of evidence is also the legal evidence carrier. Article 48 of the Criminal Procedure Law stipulates eight legal forms of evidence. According to the "legal principle of evidence", it means that only the types of evidence explicitly listed by law belong to "evidence" in the legal sense and are qualified as evidence. However, other factual materials outside the scope of this regulation can only be excluded from the court and cannot be used as evidence to prove the facts to be proved in the case because they do not belong to "evidence" in the legal sense. Different kinds of evidence will prove the facts to be proved in different forms according to their own attributes. For example, physical evidence is proved by its external features and physical attributes, while documentary evidence is proved by its expressed contents and thoughts.

In our country's judicial practice, the confession and defense of accomplices are often regarded as the legal evidence form of "confession and defense of criminal suspects and defendants" according to article 48 of our country's criminal procedure law. "Confessions and exculpations of criminal suspects and defendants" refers to the statements made by criminal suspects and defendants to the public security and judicial organs regarding the facts related to the case in the process of criminal proceedings. Due to the special central position of criminal suspects and defendants in criminal proceedings, on the one hand, he is the most clear about whether and how the criminal facts have occurred and whether the criminal acts were committed by him. On the other hand, the defendant, as a party subject to criminal prosecution, is likely to face the result of conviction and sentence, so he usually evades criminal responsibility by excusing himself. Therefore, this will inevitably lead to his confession and defense, which can also be called "confession" with the complex characteristics of combining authenticity and falsehood. In the theory of cost of evidence, oral confession, as the evidence with the lowest cost of obtaining evidence, is loved by the judiciary in all periods. Oral confession is known as the "king of evidence". Even developed countries in Britain and America have not been able to get rid of their dependence on oral confession. In judicial practice, judges regard accomplices as "confessions and explanations of suspects and defendants", which makes some crimes escape legal sanctions due to the lack of other evidence, and even makes the rule of "solitary and uncertain case", which protects the innocent, become a tool for the guilty to go unpunished.

1.2. Under the Mode of Testimony—Innocent People Are Investigated

On May 18, 2003, Zhang Gaoping and Zhang Hui, an uncle and nephew, drove to Shanghai from their hometown of Shexian County in Anhui Province. On their way, they took their fellow countryman Wang Mou to Hangzhou. The next day, Wang Mou was found dead in the wild, naked. A year later, Zhang's uncle was found guilty of rape and sentenced to severe punishment. However, during the investigation, the police did not find any direct or indirect evidence to prove Zhang's uncle committed the crime. On the contrary, the police identification results show that the only material evidence extracted from the fingernails of the deceased-mixed DNA is a mixture of the DNA of the deceased and that of another male. In spite of this, the police obtained the confession materials of Zhang's uncle and nephew through the coercion and inducements of Yuan Lianfang and others. At the beginning of 2005, Zhang Gaoping saw the news that a female student was killed in a taxi on TV. Zhang Gaoping believed that Gou Haifeng's modus operandi was very similar to that of Wang's murder case, and the identity of Gou Haifeng's taxi driver was completely consistent with the situation that Wang had to take a taxi

to the meeting place designated by his relatives and friends on the night of his murder. He then reported his suspicions to the public security organs and asked to compare Gou Haifeng's DNA with the mixed DNA in Wang's fingernails, but this was not taken seriously. After media reports in November 2011, Hangzhou Municipal Public Security Bureau compared the DNA material extracted from Wang's fingernails with the police database and found that the DNA typing was highly consistent with Gou Haifeng, a criminal who was executed in 2005.

Based on the interests of accomplices and cases, China's traditional theories and legislation also exclude them from the qualification of witnesses. However, due to the particularity of many crimes in practice, such as the crime of affray and some unfinished forms of crimes, it is often difficult to collect other words or physical evidence only because of the accomplice's confession. If no one can be convicted and punished, the criminals may get away with it. In addition, the identification of some facts or circumstances in some cases can only be confirmed through the confession of accomplices, and there is unlikely to be other evidence, such as the organization and planning process of organized crime, and the premeditated process of common crimes. Therefore, although legislation strictly distinguishes accomplices from witnesses, in judicial practice, courts often treat accomplices as witnesses, and in many cases the facts of crimes are determined according to (or mainly based on) statements that corroborate each other.

For example, in the above-mentioned cases, the main reason why innocent people are investigated lies in the fact that the judge regards the statements and explanations of Zhang's uncle and nephew as the testimony of each other's witnesses, thus identifying Zhang's uncle and nephew as guilty, which in turn leads to the occurrence of this unjust and misjudged case. Therefore, an accurate characterization of the nature of the statements and explanations of the co-defendants is helpful to alleviate the dilemma in the current judicial practice where judges directly verify each other through the statements of the co-defendants to prove that the defendants' acts constitute crimes and fall into conflict with the rule of "solitary evidence cannot be finalized" in the criminal procedure law.

2. THE TESTIMONY AND NATURE OF CONFESSIONS AND JUSTIFICATIONS OF THE CO-DEFENDANTS

2.1. Provisions on the Testimony of Confessions and Justifications of Co-defendants

Our country takes "clear facts of crime and sufficient evidence" as the standard of proof in criminal cases, but there are great differences in the practical grasp of this standard in specific cases. In order to improve the practical operability of the standard of proof, our country widely applies the "proof mode of proof" in criminal judicial practice. At present, the academic circles generally believe that in judicial practice, the core requirement of judicial proof activities in our country lies in the mutual confirmation of evidence. Because evidence is the factual material that comes with the occurrence of case facts, each evidence should have a consistent rationality on the whole and can form a unique conclusion that can exclude other reasonable doubts.

The reason for strengthening verbal evidence is that it contains all or the main part of the facts of the case and is direct evidence in theoretical classification. To a large extent, judges will form their inner conviction on this basis and make the final judgment on the case. At the same time, direct evidence also implies great fictitious risks. In order to avoid this real risk, legislators set up special reinforcement rules for verbal evidence to strengthen the probative force, so as to reach the standard of proof. Confessions and explanations of criminal suspects and defendants belong to the scope of verbal evidence, and their application in judicial practice faces many difficulties. Due to the particularity of the identity of the subject, the confession and defense of the co-defendant are not clear, which brings great challenges to the application of judicial proof. The theoretical characterization of the statements and explanations of the co-

defendants is of great significance for the judges to confirm whether the defendants are guilty or not through the statements of the two defendants.

Article 53 of China's Criminal Procedure Law stipulates that "if only the defendant makes a statement and there is no other evidence, the defendant cannot be found guilty and punished." In this regard, it should be understood that the defendant can not be found guilty if there is only one confession and no other evidence, or even if the confessions of the two defendants are mutually confirmed, the defendant cannot be found guilty. This rule provides legal guidelines, but this legal provision is relatively vague.

Article 106 of the Supreme People's Court's judicial interpretation on the implementation of the "Criminal Procedure Law of the People's Republic of China" states that "the defendant can be found guilty if he has extracted highly concealed material evidence and documentary evidence based on the defendant's statement and identification, and if the defendant's statement and other evidence proving the occurrence of the crime are mutually verified, and the possibility of collusion, confession, inducement, etc. is excluded." This provision can be regarded as the formal establishment of the "confession reinforcement rule" in our criminal justice. However, after the confession and defense of the co-defendant have both probative force and evidential ability and are qualified to enter the court, the law also fails to give a positive explanation as to whether they have independent sources of evidence, whether they can be used as corroborative evidence to reinforce and confirm the basic facts, that is, whether they can be used as independent evidence to prove the criminal facts of the defendant in this case.

In judicial practice, some courts deal with cases involving co-offenders separately, use other co-defendants as witnesses and their statements as witness testimony, and combine them with the statements of the defendants in this case. The two confirm each other, forming a so-called complete chain of evidence and producing a judicial proof process to prove that the defendants' acts constitute crimes. "According to the rumors, in order to simulate it is; Choose from opinions to decide the best. For empty words, to decide its theory; According to the isolated evidence, to believe in it and to understand it "is the past method of evidence study. However, this seems to run counter to the spirit of today's criminal procedure law. China's law clearly stipulates that in criminal proceedings we adhere to the principle of "no evidence, no argument, no conclusion".

In a joint criminal case with more than two defendants, the statements and defenses made by the co-defendants are the statements and defenses made by all the defendants regarding the alleged criminal facts in the joint criminal case. Because there is no clear legal provisions, there is no relevant judicial interpretation to explain. Therefore, in judicial practice, when the statements and pleadings of the co-defendants are used as evidence to prove whether the criminal acts of other co-defendants exist or not, and the evidence of the seriousness of the criminal facts, the issue of their probative force has always been a thorny issue for frontline public security law enforcement officers. The author believes that in order to determine the probative force of this kind of evidence, we must discuss the evidential nature of this kind of evidence.

2.2. The Theoretical Differences in the Nature of the Confession and Defense of the Co-Defendants

How to treat accomplice's confession seems to be a dilemma. Some scholars have pointed out that if conviction is allowed only on the basis of accomplice's confession, due to the conflict of interests between accomplices, there may be substantive law problems such as imputing the crime to others and reversing the status of principal and accessory, which may lead to false recognition of facts or even false occurrence. What is more serious is that it may lead the police to solve crimes only by forcing confessions, ignoring the collection and investigation of other evidence. Once the defendant confesses, everything will be fine, which will inevitably lead to

over-emphasis on confessions and illegal confession. If it is not allowed to settle a case solely on the basis of confession, the evidence available for settling the case will be reduced, many cases will not be able to make a guilty verdict, and there will be a risk of indulgence of criminals. The connotation of "confession and defense of criminal suspects and defendants" theoretically includes three aspects. First, confession, that is, the criminal suspect and the defendant admit the criminal facts charged by the prosecution against him, and explain to the judicial organs all the facts and circumstances of his factual crime, specifically manifested in surrender and confession; Second, the defense means that the criminal suspect or defendant denies that he committed the crime, or although he admits that he has committed the crime, he has made defense and explanation that he should not be investigated for criminal responsibility according to law and that he should be given a lighter or mitigated punishment or be exempted from punishment. The specific manifestations are denial, defense and other forms of expression. Three, climbing for, that is, the suspect and the defendant after admitting his crime, expose accomplices or report others have committed a crime or deny their own crime, and report others to commit a crime. As for the nature of the confession and defense of the co-defendant at present, the main theoretical difference among legal scholars lies in whether the confession and defense of the co-defendant belong to the content of "confession and defense of criminal suspect and defendant" in the legal evidence category. At present, the academic research on this issue is also relatively shallow, mainly focusing on whether the confessions of accomplices or co-defendants can be finalized independently and whether corroborative evidence is needed, and there is no consensus. However, the research on the evidence law status of confession of accomplice and co-defendant, the cross-examination procedure of confession of accomplice and co-defendant, the probative force of confession, how to coordinate the conflict with the principle of not forcing self-incrimination is very insufficient.

Some scholars believe that the statements made by the co-defendants are only facts about whether their acts constitute crimes or whether other co-defendants' acts constitute crimes, regardless of whether they are statements or exculpations in form or content. They all belong to the "confessions and exculpations of criminal suspects and defendants" in legal evidence and can be subject to the evidentiary rules of laws and regulations regarding such evidence. They think that the witness is a person who has nothing to do with the facts of the case, while the testimony of the witness is a statement made to the public security and judicial organs by the person who has nothing to do with the facts of the case and is not the criminal suspect or the defendant. Therefore, from the major premise, if the co-defendants are not satisfied with the independence required to become witnesses, their statements and explanations cannot naturally be characterized as "witness testimony". Scholars who hold this view regard the statements of the co-defendants as the statements of the defendants. Therefore, even if the statements of the co-defendants can be mutually verified, the defendants cannot be found guilty.

Another part of scholars believe that the nature of the confession and defense of the co-defendants should be classified according to their content. One kind of situation is, if the content stated by the co-defendant is only the fact that whether his act constitutes a crime, then as a participant from the beginning to the end of the case, the co-defendant must be very clear about whether the criminal act exists, whether the criminal fact occurs and how it occurs. Therefore, the content of this part of the statement should belong to "confessions and explanations of criminal suspects and defendants". As for the content of whether the acts of other co-defendants constitute crimes in their statements, the co-defendants have the identity of witnesses at this time, and this part of their statements should belong to the testimony of witnesses. In addition, under the circumstances expressly provided by law, as the bearer of legal obligations, the co-defendant is not exempted from the obligation to testify because of his special status as a party, and he shall provide the judicial organ handling the case with the facts of the case he knows. In this part of scholars' view, if the possibility of extorting confessions

or inducing confessions can be ruled out and the evidences can be mutually verified, the confession of the co-defendant can be used as witness testimony to further confirm the guilt of the defendant by reinforcing the guilty confession of the defendant. The authenticity and feasibility of accomplice's confession are still uncertain. "To prove a confession with a confession is to prove another uncertain factor with one uncertain factor, and its conclusion will remain uncertain." If the confessions of the co-defendants are treated as witness testimony, they are in fact artificially created a kind of "other evidence" other than confessions, which distorts the spirit of legislation and is extremely easy to be wrongly convicted. The author believes that this view confuses the essential difference between the defendant and the witness in our country's criminal proceedings. As a participant in the implementation of the case, the co-defendant must not be immune from the facts of the accused case. Therefore, if the statements of the co-defendants do not distinguish between the contents, it is not conducive to the adoption of the evidence, the confirmation of the facts of the case and the making of the final judgment to classify them as "confessions and explanations of the criminal suspects and defendants".

3. DETERMINATION OF THE NATURE OF CONFESSIONS AND JUSTIFICATIONS OF CO-DEFENDANTS

According to the relevant laws and regulations of our country, "confessions and explanations of suspects and defendants" and "testimony of witnesses" are two legal forms of evidence with different natures. "Confessions and exculpations of criminal suspects and defendants" are statements made by parties interested in the case and the outcome of the case to the public security and judicial organs on the facts of the case, which are highly subjective. The statements made by witnesses' testimony to the public security and judicial organs by people who know the facts of the case except the parties concerned can objectively reflect the facts of the case and are of priority and irreplaceable. In my opinion, in judicial practice, the probative force of witness's testimony is generally better than the defendant's statement and defense. For the witness, on the one hand, the outcome of the case has nothing to do with him, and on the other hand, he has no subjective initiative to drive him to commit perjury. On the other hand, the Criminal Procedure Law clearly stipulates that witnesses have the legal obligation to give truthful testimony, and the Criminal Law also stipulates the crime of perjury for witnesses who commit perjury. The cost of breaking the law is so great that witnesses who do not have any interest temptation will generally not take risks. On the contrary, the defendant, as the accused, is easy to make false statements in order to evade responsibility because of his inherent nature of seeking benefits and avoiding harms. In addition, the law does not have any punitive provisions for criminal suspects and defendants to make false statements. Without mandatory consequences, the cost is much less than the results, and the defendants are extremely easy to make false statements. However, whether the confession and defense of the co-defendants should be characterized as "confession and defense of criminal suspects and defendants" or "testimony of witnesses" is directly related to how to carry out the judicial proof of such evidence. Here, the author believes that if the contents stated by the co-defendant are other criminal acts committed by the defendant in this case that are unrelated to the criminal acts being prosecuted, the co-defendant as the third person who has no interest in the outcome of the case should be regarded as the identity of the witness, and this part of the contents stated is naturally the testimony of the witness. Therefore, what we are discussing is the facts related to the alleged criminal act stated by the co-defendants. For this part of the content, I think it should be determined according to whether the facts stated by the co-defendant have an interest in the criminal act being prosecuted.

3.1. When the content of the Statement and Defense of the Co-Defendant Is the Fact of the Result of the Criminal Act Charged by the Prosecution, the Content of the Statement of the Co-Defendant Can Only Be Recognized as Such Evidence as "The Statement and Defense of the Criminal Suspect and the Defendant"

The "criminal act charged by the prosecution" in this place includes not only the relevant facts of whether the defendant committed the criminal act in this case, but also the statements and explanations made by the co-defendant on the relevant facts of whether he committed the criminal act, so long as the occurrence of the stated facts and the acts of the co-defendant play an active role. The specific reasons are as follows: in a joint crime case, even for such extreme cases, that is, a part of the defendants directly committed the criminal act, and the criminal act directly led to the criminal result that the judicial organ was responsible for, but the other part of the defendants only committed the acts of instigation or assistance, the criminal law stipulated the joint crime to punish each of the joint defendants that caused the criminal result. However, the legal basis behind such provisions in the criminal law is that, for joint crimes, the occurrence of criminal results is not a simple sum of the criminal acts of each joint offender. On the contrary, it is driven by the subjective thought of the will of each co-offender, and is caused by the organic combination of each person's criminal acts to form a whole. As for the result of the crime, each co-offender plays an indispensable role. Therefore, as the perpetrators of criminal acts and the perpetrators of criminal results, other defendants, who are also in the status of being prosecuted, have complicated interests with the case or other parties, which is likely to prompt them to make untrue statements or excuses. Some defendants may choose one person to take over all responsibilities because of relatives or other intimate relationships with other defendants. However, some defendants may evade criminal responsibility by shifting all criminal facts to other defendants because they face the result of conviction and sentence. Either way, false statements are very unfavorable to judicial practice, investigation and verification of evidence, finding out the facts of the case, and punishment of criminals. Therefore, it is impossible for the co-defendants to provide neutral witness testimony as witnesses. Their statements can only be characterized as "confessions and explanations of criminal suspects and defendants."

According to the provisions of our country's criminal procedure law, only the defendant confessed without other evidence, shall not be convicted and sentenced. This provision is the symbol of the formal establishment of the "confession reinforcement rule" in our country. As mentioned earlier, since the statements and explanations of the co-defendants do not have independent sources, they cannot be used as corroborative evidence to reinforce the statements of the other defendants. This is because on the one hand it cannot play a reinforcing role, and on the other hand it is difficult to avoid investigators taking illegal methods such as inducing confessions and extorting confessions to collect evidence. Therefore, in a joint crime case, the confessions made by the defendants can only be verified by other evidence to establish a complete chain of proof to prove the authenticity of the confessions.

It is also possible to avoid conflicts with the relevant provisions of the criminal procedure law if the facts related to the criminal acts charged by the prosecution in the "confession and defense of the co-defendant" are identified as "confession and defense of the defendant". Article 53 of China's Criminal Procedure Law stipulates that "if only the defendant makes a statement and there is no other evidence, the defendant cannot be found guilty and sentenced." It is not difficult to see from this provision that in judicial practice, the judicial organs of our country carefully use confession evidence. The emphasis on corroboration rules is not only a requirement for the defendant's population, but also a requirement for all criminal evidence. However, for the special evidence of "confession and defense of the defendant", there is a more detailed "confession confirmation rule". Because as the cause of the crime, the defendant

knows the facts of the crime best, and his guilty statement or innocent excuse can best restore the original process of the crime. Even in the era of "confession is the king of evidence", the defendant's confession can directly lead to his conviction or acquittal. In order to avoid the repetition of history and the public security and judicial organs to collect confessions by hook or by crook, the rule that solitary testimony cannot be finalized came into being. Therefore, even if the accused facts related to himself stated by the co-defendant are not directly committed or caused by him, as long as he exerts psychological or physical force on the occurrence of the criminal result, and as one of the co-defendants, the statement can only be used as "the confession and defense of the defendant", and cannot be used as "witness testimony" to mutually confirm the confession and defense of other defendants.

3.2. When the Contents of the Confession and Defense of the Co-Defendant Are the Facts Alleged By the Prosecution and Are Not the Results of Its Criminal Acts, If the Authenticity, Legality and Legality Are Satisfied At the Same Time, We Cannot Deny the Value of the Contents

The content of its statement can be used as "witness testimony" and the evidence rule of "witness testimony" in legal evidence is applicable. In this case, the co-defendant does indeed constitute a joint crime with other defendants. However, in this situation, there is a phase in the occurrence of crimes. The co-defendant is not even aware of the occurrence of the criminal result. His criminal act did not exert any physical or psychological force on the occurrence of the criminal result. The force of his act was suspended at a certain stage. For example, A and B have discussed a burglary in a certain residential area together. A is responsible for keeping watch downstairs and B is responsible for starting the burglary. But B robbed the owner of the house after the house was built. Then A and B should set up accomplices within the scope of theft. The fact of theft alleged by the public prosecution organ stated by A can only be identified as "the confession and defense of the criminal suspect and the defendant". However, if A has any knowledge of the robbery fact carried out by B, then he can independently provide testimony as a witness, because A did not exert any force on the occurrence of the robbery result. As a third person who has nothing to do with the result of the robbery, he can give testimony neutrally. The co-defendant is the identity of a third person, that is, a witness. He exercises a citizen's right to report the case or report the case to the police. As for the facts he has stated, he is an objective witness testimony with probative force. Because what he stated is the fact that he has no interest in himself, he can provide testimony in a neutral way to correctly prove the testimony of witnesses.

4. SUMMARY

For a long time, in China's judicial practice, it has been a difficult problem to apply the confessions and explanations of suspects and defendants, as well as those of the co-defendants. The author believes that as an independent form of evidence, the "confession and defense of the co-defendant" theoretically has a question about how it should be characterized, and there is a problem of changing the attribute of evidence, which must have strict conditions. First of all, this transformation only exists in joint criminal cases. Because in non-joint crime cases, there is only one defendant's confession and defense, so there is no question of mutual confirmation with other "confessions". According to the "corroboration rules of confession" stipulated in the criminal procedure law and the "corroboration rules of confession" stipulated in the judicial interpretation, a verdict of innocence can only be made without other evidence corroborating the confession of the only defendant. Secondly, whether the confession of the co-defendant belongs to "the confession and defense of the criminal suspect and the defendant" or the testimony of the witness should be judged strictly according to the contents stated in the confession, so as to further determine the judicial proof rules and use them to prove the facts to

be proved, so as to achieve the purpose of punishing crimes and protecting human rights in criminal proceedings.

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