

Study on the Application of the People's Court in Examining and Judging the Oral Confessions of Criminal Defendants

Yi Zhao¹

¹ School of Law, Humanities and Sociology, Wuhan University of Technology, Wuhan, Hubei 430070, China

ABSTRACT

In recent years, many reports of the redress of unjust cases in China have made the public doubt the credibility of justice. Almost all false and wrong cases have a common feature. There is a mistake in the judgment of the authenticity of the defendant's oral confessions. Behind this problem, the problem of extorting a confession by torture in the judicial process, the judgment of the credibility of the oral confessions and the question of the judge's acceptance of the oral confession evidence are exposed. The following will start from the concept of oral confession and combine several practical cases to comprehensively review and judge the oral confession system in China. This article attempts to put forward opinions and suggestions on the review and judgment of the current oral confession system in China by sorting out the concept of oral confession and combining with the current actual jurisprudence in China.

Keywords: *Oral confession examination, Evidential power, Oral confession evidence, System perfection.*

1. INTRODUCTION

With the continuous deepening of the process of legalization in China, many cases of wrong marriage have come into the public's view. On the one hand, many cases of wrong marriage have been rectified, and on the other hand, they have also given a certain impact to the society. Behind many unjust, false and wrong cases, there is the figure of extorting confessions by torture. The main purpose of extorting confessions by torture is to collect oral confessions and try cases with oral confessions as the main evidence. In China's current judicial practice, there are too many unjust, false and wrong cases caused by extorting confessions by torture, which are not only the issue of the evidence system in criminal justice, but also a major issue involving the entire legal level of China. About how to improve the oral confession system in combination with practice, so as to ensure the probative force of oral evidence in China, the following will mainly discuss the significance and relevant methods of the examination and judgment of oral confession based

on the concept of oral confession evidence in combination with the actual judicial cases in China.

2. OVERVIEW OF ORAL CONFESSION

2.1 Concept of Oral Confession

"An oral confession is a kind of verbal evidence, which takes human language as its content and form of expression, and plays an indispensable role in the proof of criminal proceedings." [1] An oral confession is a statement made by the defendant or suspect to the relevant case investigation or judicial authority, and is the legal evidence of criminal proceedings.

From the content, the oral confession can include the confession of the suspect and the confession of others. Self-confession mainly refers to the suspect's admission of a certain crime, or his subjective will to explain his crime; The confession to others may usually involve other suspect, which usually occurs in joint crimes, and sometimes may also be the confession to other cases.

It is worth noting that the oral confession should be distinguished from the statement of the witness: the subject of the statement of the witness is different from the subject of the oral confession. The victim, witness, suspect or defendant makes a direct statement when the witness makes a statement, which is itself the subject. However, in the oral confession, the victim, witness, suspect or defendant is only the object to be questioned. The real subject of the oral confession is the interrogator, who ultimately completes the oral confession. At this time, how to ensure the authenticity of the oral confession is very important. This makes the authenticity of the oral confession often controversial during the trial. In the case of Chen Manfang's intentional homicide, Chen Man's guilty confession and identification record could not explain his motivation to leave his work permit at the scene, so the objectivity and authenticity of his oral confession were in doubt and could not be used as the basis for the final decision according to law.

2.2 Characteristics of Oral Confession

On the one hand, oral confession is irreplaceable in criminal proceedings, on the other hand, it is true and false because of its own characteristics. Its characteristics are as follows:

First, oral confession is comprehensive. As a kind of legal verbal evidence, the source of oral confession is the defendant, who is one of the important participants in the criminal case. The defendant usually has a comprehensive understanding of the case. From it, on the one hand, the most direct and comprehensive case information can be obtained, on the other hand, new case information can be get through questioning the suspect. In the case of the injustice of Zhang's uncle and nephew in Zhejiang Province, the oral confession of the two defendants could not be matched, which should be paid attention to in the review and judgment, so as to judge whether the previous case reasoning is reasonable.

Second, oral confession is relatively time-sensitive. The source of the oral confession is the suspect. It is the suspect's specific statement of the case from his memory of the whole case. When the case occurs, it will stimulate the suspect to a certain extent. The stimulation is intense, and the memory is more profound. Therefore, as long as the suspect's description is true, there will generally be no inconsistency between the oral confessions. In the case of Huang Zhiqiang, Fang Chunping, Cheng Fagen, Cheng Lihe's intentional homicide, robbery,

rape and extortion, several defendants not only have inconsistent and unmatched oral confessions.

Third, oral confessions are irreplaceable. Oral confession has always played a very important role in criminal cases. On the one hand, oral confession must come from the statement of the suspect himself, and cannot be replaced by his relatives and friends; On the other hand, oral confession is irreplaceable in criminal justice, especially in anti-drug cases. One of the most important evidence of conviction for drug smugglers is oral confession. In the case of Chen Zexiong transporting drugs, one of the important evidence for the court to convict him was his own oral confession. In the subsequent acquittal, Chen Zexiong did not know that the goods transported in the back seat were drugs, and his original oral confession was obtained by torture.

Fourth, it is the coexistence of truth and falsehood of oral confession. The oral confession comes from the subjective confession of the suspect. On the one hand, the truth of the oral confession can help promote the case and improve the efficiency of the judicial organ in handling cases. On the other hand, it also has some falsehood. The oral confession is easily affected by the subjective consciousness of the confessor, and the contents of the confession may be more missing, and may even conceal some important facts for the purpose of safeguarding the interests of oneself or related parties. Another possibility is to extort a confession by torture during the interrogation process, and get the result of the oral confession that meets the needs of the case handlers of the public security organ. In the intentional murder case of Liu Zhonglin, who is known as the "wronged person who has been detained for the longest time in public reports", the appellant Liu Zhonglin was released from prison with injuries and made it clear that he had been tortured to extract a confession.

Fifth, it is the variability of oral confession. The oral confession is mainly obtained after the suspect has confessed. In this process, in addition to the memory errors caused by the passage of time, it will also be affected by the subjective psychological state of the confessor. "In judicial practice, some of the suspects have a large subjective malignancy and resist in the trial, which has brought great resistance to the work of the judicial authority" [2]. The confessor may have to retract his confession because of safeguarding certain interests, or because he has a fluke mentality, or even because of external stimulation. This makes

it possible for the same criminal to retract his confession several times.

2.3 The Significance of Oral Confession

The development of the evidence system has gone through three stages, namely, the oracle stage combined with belief, the legal system stage in feudal society and the free evaluation stage after the development of the rule of law. The status of oral confession in the evidence system has also changed with the improvement of the evidence system.

From the perspective of value, first of all, from the perspective of ascertaining the truth of the case and maintaining social harmony and stability, the earlier the true and effective oral confession of the suspect is provided, the more conducive to ascertaining the truth of the case. This can not only appease the families of the victims, but also help the suspect realize his own mistakes. Secondly, the oral confession reflects the protection of human rights, and there is a process of collecting and reviewing the oral confession. In this process, the suspect and the defendant will inevitably go through a process of being questioned. In this process, they should be respected to ensure the justice of the process of obtaining the oral confession, as well as the protection of their human rights. Finally, there is a necessity to protect the legitimate rights and interests of the confessor and ensure the status balance between the confessor and the inquiry subject. The suspect or defendant needs to be questioned to obtain the oral confession, and they are in a weak position compared with the public security as interrogators. Therefore, in the process of inquiry, it is necessary to safeguard the interests of the interrogated and ensure the truthfulness of their statements. This is not only to keep suspect or defendants alive, but also to better find out the truth of the case.

3. THE CONCEPT AND SIGNIFICANCE OF EXAMINATION AND JUDGMENT OF ORAL CONFESSION

3.1 Concept of Oral Confession Examination and Judgment

The oral confession will be affected by the subjective factors such as the self-concept and psychological state of the confessor, and its probative effect needs to be verified with other objective evidence. "The public security and

judicial personnel analyze and study the contents of the suspect's confession and defense, compare and verify, identify the authenticity, find out the objective relationship between them and the case facts, so as to correctly identify the case facts." [1] Oral confession examination is a judgment on the authenticity and legitimacy of the oral confession itself and the relationship between the actual facts of the case.

As the name suggests, the object of oral confession examination is oral confession. The application of oral confession examination has its own special procedures and methods, which is different from the fact finding of the case. The determination of the facts of the case requires oral confession, but it also requires mutual confirmation of other evidence. Only a valid oral confession which is legal and valid in the process of obtaining and can be mutually verified with other evidence can be used for the determination of the facts of the case. "The act of oral confession involves two types of subjects, namely the judicial organ, the suspect and the defendant. The suspect and the defendant make the oral confession and confirm the validity of the oral confession, and the judicial organ obtains the oral confession and confirms or excludes the validity of the oral confession." [3] It can be seen that the subject of the examination of oral confession can be either an organization or an individual. It is mainly divided into two categories, namely, the prosecution and the defense in the process of obtaining oral confession. The prosecution can be investigators, prosecutors, judges and defenders, and the defense is generally suspect or defendants.

The examination and judgment of oral confession can include two aspects: the identification of oral confession by judicial personnel. The public security judicial personnel can verify the reliability of the oral confession through repeated comparison, and at the same time identify the facts of the case in the process. The second is the application of the judge to the oral confession, and whether the judge approves the oral confession provided by the public security organ when deciding the case. In the case of Li Jinlian's intentional homicide, the appellant claimed that the public security organ had forced an oral confession against him and that the physical evidence and the oral confession could not match, but the court still recognized the confession as one of the facts to be determined in the judgment.

3.2 Significance of Oral Confession Examination and Judgment

"The oral confession is limited by its own source, and it has the characteristics of coexistence of authenticity and strong repetition". [1] That is, it has strong subjectivity. In addition, the application of public security organs and judges to oral confession is also based on the subjective connection between oral confession and other evidence, and the process is also subjective. It can be seen that the authenticity of the oral confession needs to be verified by comparison during the inquiry process. Only by strictly following the review rules and using the objective evidence of the case can the reliability of the oral confession be verified.

The significance of the examination and judgment of the oral confession is reflected in the following aspects: First, it helps to promote the progress of the case. Through the reasonable analysis of the oral confession, combined with other physical evidence, and through the judgment of the authenticity of the oral confession, the progress of the case will be promoted. In Nie Shubin's case, the final case was overturned by combining the specific time and finding that the appellant's oral confession could not be corroborated with the specific material object.

Second, it is conducive to ensuring the probative force of evidence. The examination of the probative force of evidence is not limited to the examination of the authenticity of the oral confession itself, but also includes the examination of the legality of the procedure for obtaining the oral confession. One of the illegality of the source of oral confession can be seen in the Huge Jiletu's case, Liu Jiqiang's intentional homicide and Lu Rongxin's intentional homicide and rape case, which is caused by the lack of examination of the evidence acquisition procedure.

Third, it is conducive to reducing the occurrence of extorting confessions by torture. Extortion of confessions by torture can be said to be a tradition in China's legal system. On the one hand, this method can quickly end the case, and on the other hand, it will also lead to the occurrence of torture. On the one hand, this problem is caused by historical reasons, and on the other hand, it is affected by the perennial behavior habits and psychological factors of the reconnaissance personnel. "The negative professional psychology formed by investigators in their long career and the

long-standing misconception of emphasizing substance over procedure make them tend to find the suspect guilty in their hearts, and the idea of presumption of guilt occupies a leading position". [1] In the case of Qian Renfeng dropping dangerous substances, the case of Zhang Yun, Zhang Hu, Zhang Dafa, Xu Wenhai, Wu Jingxin's intentional murder and the case of Sui Yongsheng's intentional murder, the appellant mentioned that the public security organs tortured them to extort a confession, such as not letting them sleep or punching and kicking.

4. PROBLEMS AND SOLUTIONS IN THE EXAMINATION AND JUDGMENT OF ORAL CONFESSION IN CHINA

4.1 Problems in the Examination and Judgment of Oral Confession in China

For a long time, oral confession has been paid too much attention in China's judicial trial, which has led to the following problems in China's current examination and judgment of oral confession:

First, the governance of oral confession in China has always been a negative governance model, that is, "the negative model of dealing with the facts" [4]. In recent years, China has begun to attach importance to the control of oral confession, mainly because of the disclosure of major injustice cases such as Yang Dewu's intentional homicide, Ding Guoqin's intentional homicide, Lu Rongxin's intentional homicide, rape, etc., and public opinion continues to exert pressure on the judiciary. On the one hand, it has promoted the improvement of the oral confession system, and on the other hand, it has also made the oral confession governance in China always limited to the prevention and treatment of miscarriage.

The second is the contradictory mentality of oral confession governance in the hearts of the people. Another important application of oral confession in criminal justice is the review of corrupt officials. However, when suspect use torture to extort confessions in corruption cases, the public shows a completely different attitude from that in other criminal cases, and even many people are in favor of using torture to extort confessions from people suspected of corruption. In the case of Zhang Weiting, it was a case of wrong marriage caused by corruption and only by oral confession.

The third is the judge's acceptance of evidence. When the judge chooses whether to accept a certain evidence, sometimes it is accompanied by his/her own risk. In the Chen Ruiwu intentional homicide case, Ma Tingxin intentional homicide case, and Huang Yuanxun intentional homicide case, there were facts that did not match the oral confession, but the judge still chose to accept the oral confession. This is mainly based on the instinct to maintain one's own occupational safety. "In the field of fact determination, oral confession, as the most effective form of evidence for defendants to self-incriminate, has become the best choice for fact finders when facing complex evidence issues." [4]

4.2 The Way to Improve the Accuracy of Oral Confession Examination and Judgment in China

4.2.1 Exclusion of Illegal Oral Confession

The exclusionary rule of illegal evidence is an important rule for the operation of oral confession examination and judgment. "The exclusionary rule of illegal evidence refers to the rule that the public security and judicial organs should not adopt, but should exclude, the illegal evidence obtained by the investigators by torture, threat, inducement, deception and other means in the litigation." [4] The oral confession is verbal evidence, and the examination and use of oral confession also need to be subject to the rules of evidence to ensure that the oral confession is true, legal and effective, which is the embodiment of human rights protection, and is also conducive to maintaining social harmony and stability. Only effective, true and legal evidence can provide assistance for the determination of the facts of the case, which requires the exclusion of illegal and unproductive oral confession.

The elimination of illegal evidence can be repeated from the production of illegal oral confession and in the process of criminal proceedings, so as to eliminate the emergence of illegal evidence. From the source, there are two main types of illegal oral confession. One is that the illegal oral confession itself is illegal. This kind of illegal confession evidence may cause mental and physical damage to the suspect or defendant during the acquisition process, such as extorting confessions by torture, improper detention and other illegal means. The second is the injustice in the process of obtaining illegal oral confession. For example, the investigators failed to fulfill the

obligation of informing in the process of obtaining the oral confession. From the perspective of the whole process of criminal proceedings, it is possible to avoid the unproven oral confession from entering the review process, which can occur at any stage of the case trial. There should be an independent review procedure in the review process, which can be started by the judicial organ or the parties to the case.

4.2.2 Confirmation of Oral Confession and Other Evidence

For a long time, the role of oral confession has been overemphasized in practice. "China's law does not grant the defendant the right to silence. The court's investigation of the facts of the case is still centered on the defendant's oral confession, supplemented by other evidence." [5] But in fact, as a kind of oral confession, the probative effect of oral confession is the same as that of other evidence. Oral confession can not fully prove the authenticity of the facts of the case, and the oral confession is subject to the subjective influence of the confessor, and is prone to repeat the confession. To confirm the validity of the oral confession evidence, it is necessary to confirm the oral confession with other evidence. The coordination and unification of oral confession and other evidence is conducive to improving judicial efficiency and finding out the facts of the whole case more quickly. It can be seen that in order to prevent the occurrence of false and unjust cases, oral confession can not be used as the only evidence for the determination of the case, but should be paid attention to the comprehensive review of the evidence, so that all kinds of evidence can mutually verify their authenticity and effectiveness. This is conducive to correcting the negative oral confession review mode that judicial personnel in China have been too dependent on oral confession for a long time.

To sum up, there is a must to pay attention to the following points in the review and judgment of oral confession in criminal justice: first, it is necessary to pay more attention to physical evidence than oral confession, and pay attention to the relationship between oral confession and physical evidence. Because oral confession has a strong subjective randomness, for example, in Gu Peiwu's case, Gu Peiwu, who was born as a policeman, proved that the public security organ had tortured him to extort a confession, and overturned his previous oral confession. Secondly, there is also a necessity to pay attention to

excluding illegal evidence. That is to say, exclusion refers to the evidence that investigators use torture to extort confessions and threats, inducements, deception and other methods. "The prevention of wrong cases is closely connected with the application mode of the rule of exclusion of illegal evidence" [6], which reflects the new criminal procedure law's prevention of abuse of rights and respect for human rights. During the examination and judgment of oral confession, it is a must to fully understand the characteristics of oral confession and the problems in the application of oral confession in China, so as to better strengthen the examination and judgment of oral confession and ensure that oral confession plays a positive evidential value.

5. CONCLUSION

With the continuous development of the socialist society under the rule of law with Chinese characteristics and the gradual standardization of criminal proceedings, under the new framework of the rule of law, it is essential to review the evidentiary value of the oral confession. There are certain risks in verbal evidence, which is the cause of many false and wrong cases in China. It can be seen that only by strictly abiding by the principles and methods of examination and paying attention to the exclusion of illegal evidence, can the oral confession play a positive evidentiary role in the criminal justice process.

REFERENCES

- [1] Guo Xin, Basic Theory Research of Confession Review Judgment [J]. Journal of Gansu Police Vocational College, 2016, 14(04): 14-43. (in Chinese)
- [2] Luo Wei, The Transformation and Thinking of the Oral Confession System — From "Arbitrary and Special Punishment" to "Obtaining Evidence According to Law" [J]. Modern Business Trade Industry, 2020, 41(20): 165-167. (in Chinese)
- [3] Lv Shouqi, A Study of Oral Evidence from the Perspective of Rule of Law [D]. China University of Political Science and Law, 2015. (in Chinese)
- [4] Li Xunhu, Sha Lijin, Confession Governance and Verdicts in China's Criminal Justice [J]. Social Sciences in China, 2016, 37(01): 75-92. (in Chinese)
- [5] Chen Xi, Research on Criminal Verbal Evidence from the Perspective of Misjudged Cases [D]. East China University of Political Science and Law, 2020. (in Chinese)
- [6] Chen Min, Analysis on Prevention of Criminal Misjudged Cases from the Perspective of Evidence-governing Principle [J]. The Jurist, 2017(06): 97-107+178. DOI:10.16094/j.cnki.1005-0221.2017.06.008. (in Chinese)