

What is the value of confessions made under torture?

Is Ben-Uliel the Duma arsonist? He may or may not be. The verdict of the court is not based on any credible evidence.

Opinion.

Prof. Boaz Sangero, 6/28/2020, ו' בתמוז תש"פ, 6/28/2020



Flash 90

A horrific murder was committed in the village of Duma on the night of July 31, 2015. A Molotov cocktail was thrown at the residence of the Dawabsha family. Saad and his wife Raham and their baby Ali perished in the resulting fire and their toddler Ahmed was seriously injured. We all wanted the despised killer to be caught and severely punished.

The question is, how willing are we as a society to risk the conviction of an innocent person, provided we can pat ourselves on the back and say that we captured and punished the killer? In the Middle Ages, physical torture was used to force victims to confess. Today, psychological torture has largely replaced physical torture as an effective means of extracting confessions, some of which are false confessions. And the Shabak continues to use physical torture alongside psychological torture.

Last month, Amiram Ben-Uliel was convicted of the shocking murder at Duma. The defendant was interrogated for 17 days without being allowed to meet with an attorney. He did not confess to the crime. Subsequently, he was tortured by the Shabak. (The verdict did not use the word "torture". Instead they said that "special measures were used against the defendant as part of a necessary investigation"). The accused confessed to the crime following this unrelenting torture.

Allegedly, the Shabak only applies torture in "ticking bomb" cases. But in this case, the Shabak began their torture 17 days after the accused's silence during the interrogations. It seems that according to the Shabak, every "bomb" has its own "ticking" time.

The court disqualified the confessions which the accused made during the torture, as well as the confessions he subsequently made to police investigators while Shabak interrogators were in the room, intimidating the suspect. But the court separated these confessions from later confessions, which it accepted as credible evidence, even though the accused claimed that he experienced continuing terror by the hand of his Shabak torturers. Is this not a reasonable reaction to such indescribable trauma?

During his investigation by the police, the defendant asked to meet with defense counsel. Half an hour later, Miguel, head of the Shabak interrogators, entered the room. A quarter of an hour later, the defendant agreed to confess to police investigators. What is the value of a confession under fear of torture? After his confession to the police, which the court eventually accepted as valid evidence, the defendant was taken to another Shabak "necessary interrogation," proving that his fears were completely valid.

The court traditionally gives significant weight to the reconstruction of a crime scene. But it turns out that, contrary to police instructions, the reconstruction in the accused's case was conducted by Erez Amoyal, head of the police investigative team, who was too versed in details to be objective. Furthermore, Miguel, the accused's chief Shabak investigator, also accompanied the team to the Duma crime scene, whose presence terrorized the accused into repeating his confession. The court ruled that "Miguel's presence was not sufficient to invalidate the results of the crime scene reconstruction."

The court in the Duma case seems to be acting under an a-priori acceptance of the defendant's guilt ("Tunnel Vision"), incapable of objective examination of evidence. The court dismissed the accused's alibi which was supported by the testimonies of three people. It gave zero credibility to a professional graphological opinion that the Hebrew inscriptions sprayed on the walls of the house in Duma were not in the defendant's handwriting.

The court also gave great credence to the defendant's knowledge of certain details of the crime scene. Studies have shown that police investigators often reveal the details of the crime scene to the defendant through subtle

questions. The court gave great weight to two "details" which the accused knew - one: the defendant knew that the window through which the Molotov cocktail was thrown opened from left to right. But there are only two options, each with 50% chance of being the correct answer.

The second detail: The defendant stated that he saw a black vehicle at the scene. Neighboring witness Ibrahim testified that the vehicle of the victim was black. He also testified that he saw two men wearing masks at the scene of the crime, acting in a suspicious manner. He gave a detailed description of both men. This is an extremely vital detail because the confession on which the accused was convicted of murder relates to a single murderer. The court strongly adopted Ibrahim's testimony as to the color of the vehicle, while contemptuously dismissing his testimony that he saw two suspects at the scene of the crime. I would not disparage the testimony of Ibrahim, who saved a child from the fire.

Is Ben-Uliel the arsonist? He may or may not be. The verdict of the court is not based on any credible evidence. We have here another case of a dangerous conviction which relies only on a problematic confession made under duress.

Police investigations are utilizing psychological pressures which often yield false confessions. The Shabak interrogators torture Palestinians and sometimes Jews. Torture is always evil. The weight of such confessions is always zero. But the courts in Israel approve almost all confessions, even if they lack any significant evidence.

The time has come for the legislature to intervene: to state that there is no evidentiary value for such confessions; and that no conviction can be made on the basis of (any) confession without substantial evidence.

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