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The imperfect confession: dysfunctionality of the restriction on sincere confession in alleged flagrante delicto

La confesión imperfecta: disfuncionalidad de la restricción a la confesión sincera en la flagrancia presunta

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Abstract

This study analyzes, through a paradigmatic case, the concept of imperfect confession, which arises when a defendant arrested in the act of committing a crime offers a voluntary and useful statement, but the system denies it recognition as a sincere confession due to the restriction of Article 161 of the Peruvian Code of Criminal Procedure. To this end, the study was approached from a qualitative perspective with a hermeneutic case study design. The results show that this restriction, designed for cases of conclusive flagrancy, is counterproductive in cases of alleged flagrancy, as it violates the defendant's right to defense, due process, and effective judicial protection. Simultaneously, it hinders the search for truth and the efficiency of evidence by discarding a key source of information. The study concludes that the circumstantial and weak nature of alleged flagrancy requires confession as a mechanism to corroborate the facts and access a reduced sentence. Therefore, a legal reform is proposed to create an exception to this provision, establishing a strict control regime that allows for the evaluation of an imperfect confession as a genuinely useful confession, thus balancing the effectiveness of the criminal justice system with the protection of fundamental rights.

Keywords: due process, regulatory dysfunction, presumed flagrancy, imperfect confession, right to defense, evidentiary efficiency.

Resumen

Este estudio analiza, a través de un caso paradigmático, la figura de la confesión imperfecta que surge cuando un imputado detenido en flagrancia presunta ofrece una declaración voluntaria y útil, pero el sistema le niega el reconocimiento como confesión sincera debido a la restricción del artículo 161° del Código Procesal Penal Peruano. Para tal fin, el estudio se abordó desde una perspectiva cualitativa con un diseño de estudio de caso hermenéutico. Como resultados se evidencia que esta restricción, diseñada para la flagrancia contundente, resulta contraproducente en la flagrancia presunta pues vulnera el derecho de defensa, el debido proceso y la tutela jurisdiccional efectiva del imputado; paralelamente, obstaculiza la búsqueda de la verdad y la eficiencia probatoria al desechar una fuente clave de información. El estudio concluye que la naturaleza indiciaria y débil de la flagrancia presunta requiere de la confesión como mecanismo para corroborar los hechos y acceder a la reducción de pena. Por ello, se propone una reforma legal que excepcione este supuesto, estableciendo un régimen de control estricto que permita valorar la confesión imperfecta como una verdadera confesión útil, equilibrando así la efectividad del sistema penal con una protección garantista de los derechos fundamentales.

Palabras clave: debido proceso, disfuncionalidad normativa, flagrancia presunta, confesión imperfecta, derecho de defensa, eficiencia probatoria.

Introduction

The tension between effective criminal prosecution and the guarantee of a defendant's fundamental rights remains one of the central problems in criminal procedural law. In the Peruvian context, this tension is felt with particular intensity at the intersection between presumed flagrante delicto, conceived as a vehicle for investigative speed (Arguello, 2024), and sincere confession, an instrument of cooperation and truth-seeking. The problem arises because the first paragraph of Article 161 of the Code of Criminal Procedure (CPP) bars anyone arrested in flagrante delicto from accessing the sentencing benefit tied to confession, without distinguishing among its different forms.

Sincere confession is not merely an admission of guilt. It carries evidentiary value, since it provides a direct account for reconstructing the facts (Taruffo, 2015); procedural value, in that it expresses an active defense; and reward value, since it incentivizes cooperation and promotes economy and speed in the proceedings (Vallejo & Chiquimarca, 2025). Excluding it may be understandable when the act was witnessed immediately and supported by clear evidence, since under those circumstances the statement adds little relevant information (Bello, 2022). That justification, however, does not automatically carry over to presumed flagrante delicto.

Presumed flagrante delicto, governed by Article 259.4 of the CPP, permits an arrest after the fact based on connecting evidence rather than direct perception of the act itself (Espinoza, 2023). Unlike strict or quasi-flagrante delicto, it lacks personal and temporal immediacy (San Martín, 2015), and its evidentiary basis can be insufficient or doubtful (Vera, 2024; Bautista, 2024). The presumption of innocence therefore retains a decisive field of application here, demanding rigorous inference rather than mere possibility (León, 2023).

Applying an absolute prohibition to this modality produces a threefold dysfunction: it discards a potential source of corroboration in cases that are initially weak, discourages cooperation that could help clarify the facts, and restricts the exercise of an active defense. It can also undermine due process, effective judicial protection, and procedural equality by denying the benefit to someone who cooperates usefully, solely because of how their arrest was classified (Mío, 2025).

To examine this gap, the study adopts a case-study design (Stake, 2007) centered on the attempted-homicide proceedings brought against Alonso Gonzalo Valencia López in Callao (Case File No. 01013-2025-1-0701-JR-PE-07). The arrest rested on circumstantial evidence, and although the confession was formally denied, the defendant testified, acknowledged his involvement, revealed the motive, and disclosed the weapon's location, information that was later corroborated. This study conceptualizes that contribution as an “imperfect confession” and seeks to determine how the restriction in Article 161 of the CPP becomes dysfunctional in cases of presumed flagrante delicto, while also laying the groundwork for a legal exception subject to reinforced controls on spontaneity, legality, usefulness, and corroboration.

Methodology

This study falls within the qualitative research paradigm, adopting a legal-interpretive approach with an analytical and prescriptive scope. This paradigm was chosen because it allows for an in-depth understanding of a complex phenomenon in which norms, institutional practices, and fundamental rights converge, privileging interpretive depth over statistical measurement (Ballestín & Fàbregues, 2019; Hernández-Sampieri & Mendoza, 2018). Such a design is consistent with the goal of exploring the regulatory dysfunction created by the prohibition on sincere confession in cases of presumed flagrante delicto and of proposing a well-grounded alternative.

The research further adopts a single instrumental and hermeneutic case-study design (Stake, 2007; Yin, 2018). The selected case, Case File No. 01013-2025-1-0701-JR-PE-07, brought against Alonso Gonzalo Valencia López in the judicial district of Callao, is examined not for its isolated intrinsic interest but as a paradigmatic case capable of illustrating, elucidating, and theorizing the broader problem. The unit of analysis thus consists of the intersection between the case's factual circumstances (an arrest for presumed flagrante delicto supported by weak evidence) and the restrictive application of Article 161 of the Code of Criminal Procedure.

The study drew on a documentary corpus built from three types of sources. The first was empirical and primary: the key procedural documents from the case file mentioned above, specifically the police intervention report, the defendant's statement, the prosecutorial rulings on classification, and the corroborated elements of conviction. The second comprised normative and jurisprudential sources: the Peruvian Code of Criminal Procedure, Plenary Agreements of the Supreme Court (such as No. 4-2016/CJ-116 and No. 5-2008/CJ-116), relevant cassation rulings (No. 1970-2019, No. 420-2019), and decisions of international tribunals (the Inter-American Court of Human Rights) that establish standards on flagrante delicto and due process. The third consisted of doctrinal sources: national and comparative academic literature on sincere confession, presumed flagrante delicto, fundamental rights, and procedural efficiency. This corpus was assembled according to criteria of thematic relevance, legal authority, and usefulness for contrasting the categories of analysis.

The analytical procedure, in turn, unfolded in three stages. The first involved reconstructing the case's factual and legal narrative, identifying the moment of arrest, the defendant's willingness to confess, the prosecutor's denial, and the point at which the “imperfect confession” materialized. The second stage entailed documentary analysis and thematic coding of the jurisprudential and doctrinal sources.

Atlas.ti software was used for this purpose, making it possible to organize the information around predefined and emergent categories such as: the configuration of the evidentiary indicia, evidentiary usefulness, violation of the right to defense, impact on due process, procedural asymmetry, and proposals for reform. The third stage consisted of hermeneutic triangulation (Haro et al., 2024), whereby the empirical case findings were interpreted in light of the normative framework, jurisprudential criteria, and doctrinal debates, allowing conclusions and proposals to be formulated on the basis of converging perspectives.

Methodological rigor was grounded in the criteria characteristic of qualitative research (Noreña et al., 2012; Hernández-Sampieri & Mendoza, 2018). Credibility was ensured through the triangulation of sources and methods, contrasting the analysis of the case file with case law and doctrine. Dependability was strengthened by transparently documenting the case-selection process, the categories of analysis, and the use of coding tools.

Confirmability was pursued by explicitly presenting the evidence underlying each interpretation, thereby reducing researcher bias. Transferability, finally, does not aim, as already noted, at statistical generalization but rather at analytical generalization; the findings regarding regulatory dysfunction in this specific case offer a framework for understanding that can be applied to other criminal proceedings sharing similar structural features.

With regard to ethical considerations, the judicial case file was analyzed in a manner that respected the presumption of innocence, drawing on information contained in public procedural documents for strictly academic and analytical purposes. No judgment was made regarding the defendant's substantive guilt beyond what was relevant to analyzing the procedural institution at issue. The study likewise acknowledges its own limitations: because it rests on a single case study, its results illustrate the depth of the problem and support the case for reform, but they are not intended to quantify the statistical frequency of this dysfunction across the Peruvian criminal justice system as a whole.

Results

The analysis of the Valencia López case, together with the review of the literature and case law, reveals a series of findings that demonstrate the practical dysfunction of the restriction in Article 161 of the CPP in scenarios of presumed flagrante delicto. The results are organized around the case's evidentiary configuration, the impact on procedural guarantees, and the effects on the efficiency of the criminal justice system.

First, the case file shows that presumed flagrante delicto, far from constituting a scenario of manifest certainty, generated a context of considerable initial evidentiary uncertainty. The police intervention did not occur at

the moment the offense was committed but hours later, and it rested on circumstantial indicia: the suspect's suspicious behavior, his presence in an area near the scene, and his possession of illicit substances that constituted a related offense.

In this scenario, absent direct evidence of the attempted homicide, the link between the defendant and the principal offense was tenuous and rested on inferences that, standing alone, were insufficient to soundly rebut the presumption of innocence. This factual configuration bears out the doctrinal premise that presumed flagrante delicto, lacking personal and temporal immediacy, frequently presents a significant evidentiary deficit.

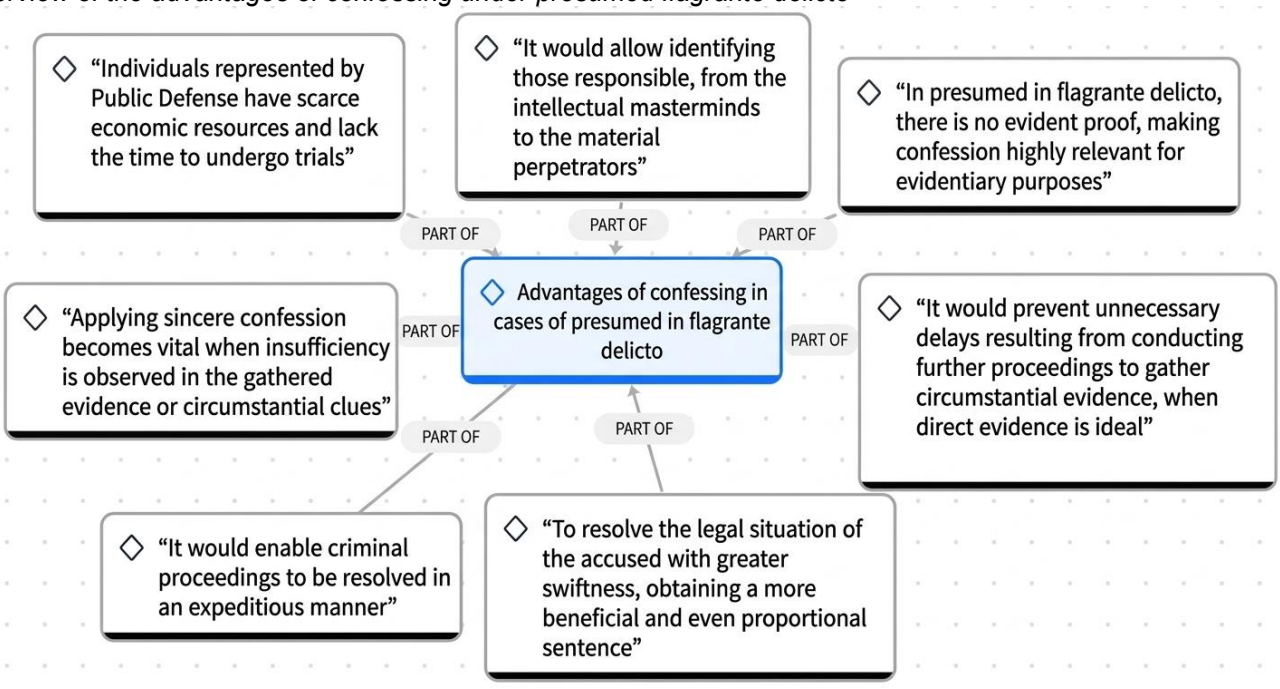
Faced with this investigative weakness, the defendant expressed his willingness to cooperate with the administration of justice through a sincere statement. The Public Prosecutor's mechanical application of the first paragraph of Article 161 of the CPP, however, foreclosed that possibility, denying formal recognition of his act as a sincere confession and, consequently, access to the sentencing benefit tied to it.

Despite this formal denial, Valencia López gave a statement that, in substantive terms, amounted to what this study calls an “imperfect confession.” In it, he not only admitted his role in the offense under investigation but also provided information qualitatively superior to the police indicia: he detailed the motive behind the crime and, decisively, disclosed the exact location of the weapon used. That information was later corroborated through the prosecutor's investigative acts, furnishing the case with the evidentiary sufficiency it had initially lacked.

The hermeneutic analysis of this scenario makes clear that confession in cases of presumed flagrante delicto offers substantial advantages that the system forfeits by maintaining the prohibition. These advantages are systematized in Figure 1.

Figure 1

Overview of the advantages of confessing under presumed flagrante delicto



Source. Authors’ own elaboration with Atlas.ti

As Figure 1 illustrates, recognizing confession in these cases compensates for the absence of clear evidence, avoids unnecessary delays stemming from the search for additional indicia, speeds up the resolution of the defendant's legal situation, and proves vitally important for indigent defendants represented by the Public Defender's Office, who depend on prompt and proportionate outcomes.

Second, the results show that the normative restriction produced a cascading violation of the defendant's fundamental rights. By refusing to classify his statement as a sincere confession, the system prevented him from exercising his right to defense in its active, collaborative dimension. The defendant chose a defense strategy grounded in contributing material truth, yet the system denied that strategy any procedural validity, arbitrarily curtailing his right to present evidence and undermining due process.

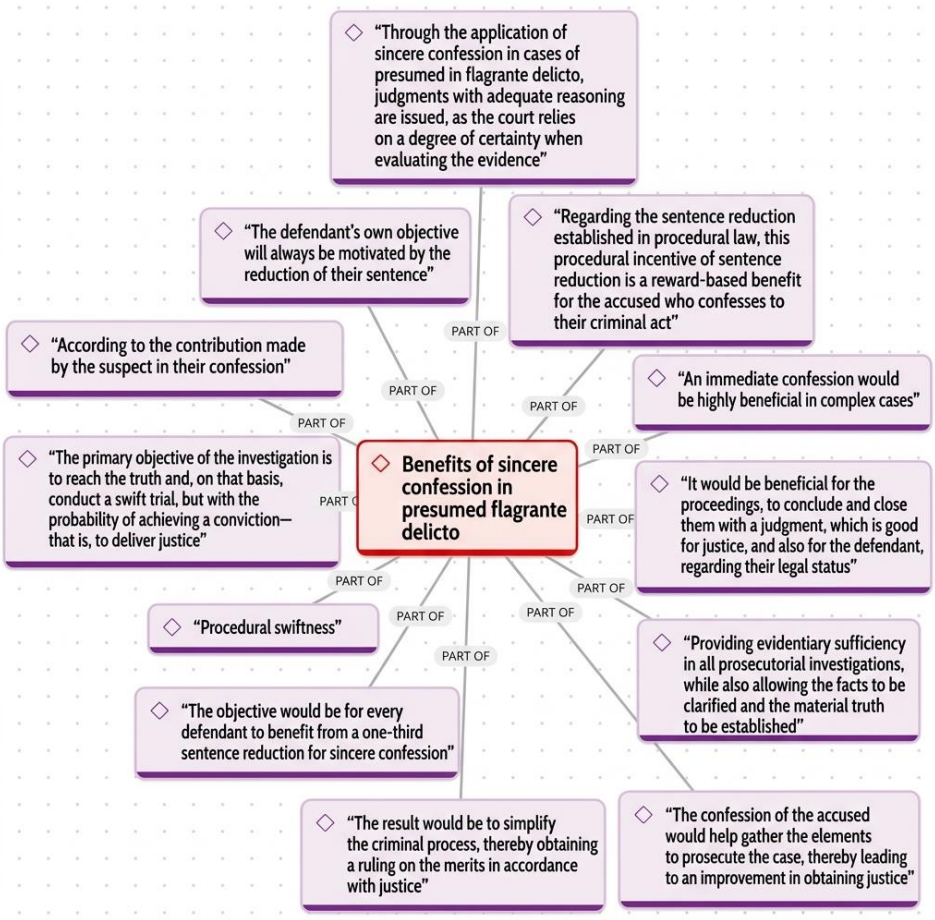
A breach of the principle of procedural equality likewise materialized, given that Valencia López contributed evidentiary elements of equal or greater relevance than those typically provided by defendants arrested outside of flagrante delicto, yet he was excluded from the sentencing benefit solely because of how his arrest was classified in time.

Third, the case reveals a direct negative impact on evidentiary efficiency and procedural speed. The prohibition formally discouraged the defendant's cooperation, even though in this particular case he chose to testify regardless. From a systemic standpoint, the rule sends a discouraging message: cooperating under presumed flagrante delicto yields no benefit.

This forces the Public Prosecutor's Office to invest time and state resources in complex investigative measures to build a solid case out of weak indicia, thereby extending the length of the preparatory investigation. Figure 2 summarizes the benefits the system forfeits by maintaining this restriction.

Figure 2

Benefits of sincere confession under presumed flagrante delicto



Source. Authors' own elaboration with Atlas.ti

Figure 2 highlights that admitting sincere confession in cases of presumed flagrante delicto furnishes the prosecutorial investigation with evidentiary sufficiency, facilitates properly reasoned judicial decisions by raising the degree of certainty involved, simplifies the criminal process, and represents a fair sentencing benefit that encourages defendants to help clarify complex cases, thereby securing a faster and more substantively grounded form of justice.

Discussion

As shown above, the results drawn from the Valencia López case confirm the doctrinal critiques of the dysfunction inherent in Article 161 of the CPP and lend them empirical support. The “imperfect confession” functions as a magnifying lens, revealing how a rule designed on the assumption that flagrante delicto entails incontrovertible evidence produces counterproductive effects when applied to presumed flagrante delicto, eroding the pillars of an efficient, rights-protective criminal process.

The first point of discussion concerns the nature of sincere confession in relation to presumed flagrante delicto. Historically, confession has evolved from its conception as *regina probationum* toward a rights-protective instrument of cooperation (Maier, 1996; Carbonel, 2011). The doctrinal corpus also recovers historical references on the continental evolution of flagrante delicto (Castellanos, 2016; Garçon, 1912), retained here for the sake of traceability within the original version of the study. Its value is evidentiary, procedural, and premial in nature (Taruffo, 2015; Vallejo & Chuquimarca, 2025). Article 161 of the CPP and Nullity Appeal No. 3599-2012 both recognize that, once corroborated, a confession may operate as a legitimate procedural incentive.

Peru's Supreme Court case law has established that what is rewarded is the willingness to cooperate in uncovering the truth, not the mere acknowledgment of the obvious (Plenary Agreement No. 5-2008/CJ-116, 2008; Cassation No. 1970-2019, 2022). The legal restriction, however, proceeds from the premise that in flagrante delicto the offense is so evident that confession serves no purpose (Bello, 2022). The case analyzed here dismantles that generalization.

As Vera (2024) and Bautista (2024) argue, presumed flagrante delicto is characterized by the absence of immediacy and by reliance on indicia that are often fragile (San Martín, 2016; León, 2023). Within this terrain of uncertainty, Valencia López's confession proved decisive in turning a weak case into a solid one, supplying both the motive and the murder weapon. This bears out the position taken by scholars such as Bazalar (2017) and Huamán (2017), who maintain that in presumed flagrante delicto, confession is a necessary and useful evidentiary mechanism.

The second critical issue concerns the violation of fundamental guarantees. The prohibition prevents the defendant from exercising his right to defense in its active, cooperative form (Fairen, 1969; Montero, 1997), curtailing his right to present evidence and straining due process (Agudelo, 2005). It further undermines effective judicial protection by preventing a prompt, well-substantiated resolution (Priori, 2014; Marcheco, 2020). More serious still is its effect on the principle of procedural equality (Santacruz, 2017; Ochoa-Risco et al., 2025): it creates a second-class category of defendants who, despite cooperating substantially, are excluded from the sentencing benefit for the sole reason of how their arrest was classified, contravening the demands of a rights-protective criminal law (Ferrajoli, 2004).

Third, the restriction proves inefficient. By eliminating the sentencing incentive, the system discourages early cooperation, producing a twofold harm: the defendant faces a harsher sentence despite his contribution, and the administration of justice forgoes an opportunity for procedural economy (Arguello, 2024; Román, 1995). The Public Prosecutor's Office is forced to conduct redundant proceedings to prove what the defendant was already willing to admit and corroborate voluntarily, clogging the system with slow investigations and heightening the risk of impunity as indicia fade over time (Mayanga, 2018; Yamunaqué-Gonzáles & Moreno-Aguilar, 2021).

Given this diagnosis, the discussion converges on the need for a differentiated legal reform. Comparative case law, including rulings by the Inter-American Court of Human Rights (2015, 2020) and the Supreme Court of Justice of Argentina (2009), emphasizes the need for strict evidentiary standards and respect for due process in flagrante delicto contexts. In line with the proposals of Mío (2025) and Reyna Alfaro (2006), the solution does not lie in eliminating Article 161 of the CPP, but rather in expressly exempting presumed flagrante delicto from its absolute prohibition.

This exception should be conditioned on strict controls over legality and corroboration. Both the Public Prosecutor's Office and the court must verify that the confession meets the requirements of spontaneity, coherence, substantive usefulness for clarifying the facts, and objective peripheral corroboration (Plenary Agreement No. 4-2016/CIJ-116, 2017; Cassation No. 420-2019, 2020). This would prevent the incentive from validating confessions obtained under pressure, striking a balance between effective criminal prosecution and the protection of fundamental rights.

Conclusions

Sincere confession constitutes a necessary and strategic procedural tool in the specific context of presumed flagrante delicto. Given the evidentiary nature of this scenario and its frequent initial insufficiency of proof, stemming from the absence of personal and temporal immediacy, a defendant's voluntary, cooperative statement stands out as a fitting mechanism for strengthening the investigation. Once corroborated, its admission activates the

evidentiary process, expedites case resolution, and achieves a degree of solidity that presumed flagrante delicto cannot guarantee on its own.

The absolute restriction set out in the first paragraph of Article 161 of the Code of Criminal Procedure gravely and cumulatively violates a set of the defendant's fundamental rights. By preventing a voluntary and useful statement from being recognized as a confession and from accessing the corresponding sentencing benefit, it violates the essential core of the right to an active defense, undermines due process, obstructs effective judicial protection, and breaches the principle of procedural equality, creating a discriminatory and asymmetrical category of defendants.

This normative prohibition inflicts a twofold harm on both the defendant and the effectiveness of the justice system. For the defendant, it removes the key sentencing incentive that motivates cooperation, exposing him to a potentially harsher sentence despite his contribution to clarifying the facts. For the criminal justice system, it forgoes a direct and cost-effective avenue for obtaining evidence, needlessly prolongs investigations, increases procedural costs, and raises the risk of impunity through evidentiary insufficiency or the fading of indicia over time.

In sum, the case examined here stands as an empirical paradigm of the “imperfect confession” and demonstrates the urgent need for a differentiated legal reform. It is essential to amend Article 161 of the Code of Criminal Procedure to expressly exempt presumed flagrante delicto from the general restriction on sincere confession. This reform must incorporate strict controls over corroboration and legality, to be carried out by the Public Prosecutor's Office and the court, verifying the spontaneity, truthfulness, and usefulness of the statement. Only in this way can procedural efficiency be balanced with the inalienable protection of fundamental rights, fostering a swifter and more rights-protective system of criminal justice.

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