



FACULTY OF JURIDICAL SCIENCES

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ACCOMPLICE

Accomplice Witness and its admissibility as Evidence In the basic sense Accomplice Witness mean a witness to a crime who, either as principal, Accomplice, or Accessory, was connected with the crime by unlawful act or omission on his or her part, transpiring either before, at time of, or after commission of the offense, and whether or not he or she was present and participated in the crime.

The word 'accomplice' has not been defined by the Indian Evidence Act, 1872. An accomplice is one of the guilty associates or partners in the commission of a crime or who in some way or the other is connected with the commission of crime or who admits that he has a conscious hand in the commission of crime.

To the lay man, accomplice evidence might seem untrustworthy as accomplices are usually always interested and infamous witnesses but their evidence is admitted owing to necessity as it is often impossible without having recourse to such evidence to bring the principal offenders to justice. Thus accomplice evidence might seem unreliable but it is often a very useful and even invaluable tool in crime detection, crime solving and delivering justice and consequently a very important part of the Law of Evidence.

Section 133 of the Indian Evidence Act, 1872 deals with the Accomplice Witness. It says that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Usually most of the crimes are committed at secluded places where there will not be any eye – witness to testify regard to these offences, and it would not be possible for the police to get sufficient evidence to prove the guilt of the accused. In such cases what police does is that it picks up one of the suspects arrested who is usually least guilty and offers to him an assurance that if he is inclined to divulge all information relating to the commission of the crime and give evidence against his own colleagues, he will be pardoned. So any such person who is picked up or who is taken by the police for the purpose of giving evidence against his own colleagues is known as an accomplice or an approver.

An accomplice is a competent witness provided he is not a co accused under trial in the same case. But such competency which has been conferred on him by a process of law does not deny him of the character of an accused. An accomplice by accepting a pardon under Section 306 CrPC(Code of Criminal procedure,1973) becomes a competent witness and may as any other witnesses be examined on oath.

Definition: In the basic sense Accomplice Witness mean a witness to a crime who, either as principal, Accomplice or Accessory was connected with the crime by unlawful act or omission on his or her part, transpiring either before, at time of, or after commission of the offense, and whether or not he or she was present and participated in the crime. The word 'accomplice' has not been defined by the Indian Evidence Act, 1872. An accomplice is one of the guilty associates or partners in the commission of a crime or who in some way or the other is connected with the commission of crime or who admits that he has a conscious hand in the commission of crime. An accomplice is one concerned with another or others in the commission of a crime or one who knowingly or voluntarily cooperates with and helps others in the commission of crime. It was held in R.K Dalmia v. Delhi Administration that "an accomplice is a person who participates in the commission of the actual crime charged against an accused.

Categories of Accomplice:

- 1. Principal offender of First Degree and Second Degree:** The principal offender of first degree is a person who actually commits the crime. The principal offender of the second degree is a person who either abets or aids the commission of the crime.
- 2. Accessories before the fact:** They are the person who abet, incite, procure, or counsel for the commission of a crime and they do not themselves participate in the commission of the crime.
- 3. Accessories after the fact:** They are the persons who receive or comfort or protect persons who have committed the crime knowing that they have committed the crime. If

they help the accused in escaping from punishments or help him from not being arrested, such persons are known as harbourers. These persons can be accomplices because all of them are the participants in the commission of the crime in some way or the other. Therefore anyone of them can be an accomplice.

Competency of Accomplice as Witness: An accomplice is a competent witness provided he is not a co-accused under trial in the same case. But such competency which has been conferred on him by a process of law does not divest him of the character of an accused. An accomplice by accepting a pardon under Section 306 CrPC becomes a competent witness and may as any other witnesses be examined on oath; the prosecution must be withdrawn and the accused formally discharged under Section 321 CrPC before he can become a competent witness. Even if there is an omission to record discharge an accused becomes a competent witness on withdrawal of prosecution. Under Article 20(3) of the Constitution of India, 1950 no accused shall be compelled to be a witness against himself. But as an accomplice accepts a pardon of his free will on condition of a true disclosure, in his own interest and is not compelled to give self-incriminating evidence the law in Sections 306 and 308, Code of Criminal Procedure is not affected. So a pardoned accused is bound to make a full disclosure and on his failure to do so he may be tried of the offence originally charged and his statement may be used against him under Section 308.

When Accomplice becomes a competent witness: Section 118 of the Indian Evidence Act says about competency of witness. Competency is a condition precedent for examining a person as witness and the sole test of competency laid down is that the witness should not be prevented from understanding the questions posed to him or from giving rational answers expected out of him by his age, his mental and physical state or disease. At the same time Section 133 describes about competency of accomplices. In case of accomplice witnesses, he should not be a co-accused under trial in the same case and may be examined on oath.

Some propositions have been made by Courts in this regard:

First, courts have opined that such competency, which has been conferred on him by a process of law, does not divest him of the character of an accused and he remains a participes criminis and this remains the genesis of the major problem surrounding the credibility of such evidence.

Secondly, an accomplice by accepting a pardon under Section 306 CrPC becomes a competent witness and may as any other witness be examined on oath, the prosecution must be withdrawn and the accused formally discharged under Section 321 of the Criminal Code before he would be a competent witness¹⁸ but even if there is omission to record discharge, an accused is vested with competency as soon as the prosecution is withdrawn.

Thirdly, Article 20(3) of the Indian Constitution says that no accused shall be compelled to be a witness against himself. But as a co-accused accepts a pardon of his free will on condition of a true disclosure, in his own interest, and is not compelled to give self-incriminating evidence, Section 306 and 308 of CrPC is not affected and a pardoned accused is bound to make a full disclosure and on his failure to do so he may be tried of the offence originally charged and his statement may be used against him under Section 308. This suggests that a participes criminis continues to be the same and if so then despite the fact that his involvement has been pardoned by a judicial act can be used for self-incrimination and to expect a “true and full disclosure” is unreal. In order to be an accomplice a person must participate in the commission of the same crime as the accused and this he may do in various ways.

In India all accessories before the fact if they participate in the preparation for the crime are accomplices but if their participation is limited to the knowledge that crime is to be committed they are not accomplices. However opinion is divided as to whether accessories after the fact are accomplices or not. In some cases it has been held that in India there is no such thing as an accessory after the fact whereas in some cases accessories after the fact have been held to be accomplices. Three conditions must unite to render one an accessory after the fact: The felony must be complete The accessory must have knowledge that the principal committed the felony The accessory must harbour or assist the principal felon.

Importance of Section 114 and 133:

These are the two provisions dealing with the same subject. Section 114 of the Indian Evidence Act says that the court may presume that an accomplice is unworthy of any credit unless corroborated in material particulars. Section 133 of the Indian Evidence Act says that an accomplice shall be a competent witness as against the accused person and a conviction the accused based on the testimony of an accomplice is valid even though it is not corroborated in material particulars.

Necessity of Corroboration: Reading Section 133 of the Evidence Act along with Section 114(b) it is clear that the most important issue with respect to accomplice evidence is that of corroboration. The general rule regarding corroboration that has emerged is not a rule of law but merely a rule of practice which has acquired the force of rule of law in both India and England. The rule states that: A conviction based on the uncorroborated testimony of an accomplice is not illegal but according to prudence it is not safe to rely upon uncorroborated evidence of an accomplice and thus judges and juries must exercise extreme caution and care while considering uncorroborated accomplice evidence. An approver on his own admission is a criminal and a man of the very lowest character who has thrown to the wolves his erstwhile associates and friends in order to save his own skin. His evidence, therefore must be received with the greatest caution if not suspicion.

Accomplice evidence is held untrustworthy and therefore should be corroborated for the following reasons: An accomplice is likely to swear falsely in order to shift the guilt from himself.

An accomplice is a participator in crime and thus an immoral person.

An accomplice gives his evidence under a promise of pardon or in the expectation of an implied pardon, if he discloses all he knows against those with whom he acted criminally, and this hope would lead him to favour the prosecution.

Like the Supreme Court has laid down what is known as theory of "double test" in the case of ***Sarwan Singh v. State of Punjab***. In this case Sarwan Singh who was the third

accused, was tried along with two others, i.e. Gurdayal Singh and Harbans Singh, under Section 302 for the murder of one Gurdev Singh who was the brother of the first accused, Harbans Singh. The case was that Sarwan Singh along with Gurdayal Singh and Banta Singh, who became an approver later on, caused the death of Gurdev Singh and all the accused were convicted on the basis of the evidence of Banta Singh. So the evidence of Accomplice is subject to corroboration.

Nature of Corroboration: Generally speaking corroboration is of two kinds. **Firstly** the court has to satisfy itself that the statement of the approver is credible in itself and there is evidence other than the statement of the approver that the approver himself had taken part in the crime.

Secondly the court seeks corroboration of the approver's evidence with respect to the part of other accused persons in the crime and this evidence has to be of such a nature as to connect the other accused with the crime.

The corroboration need not be direct evidence of the commission of the offence by the accused. If it is merely circumstantial evidence of his connection with the crime it will be sufficient. The corroboration need not consist of evidence which, standing alone would be sufficient to justify the conviction of the accused. If that were the law it would be unnecessary to examine an approver. All that seems to be required is that the corroboration should be sufficient to afford some sort of independent evidence to show that the approver is speaking the truth with regard to the accused person whom he seeks to implicate.

Detectives, Decoys and Trap Witness: Detectives, decoys and trap witness cannot be put on a par with the accomplice. These are the persons who act for the advancement of public justice and their aim is to bring the culprits to book. Although they pretend to collaborate with the culprits in the commission of crime they do not share the element of Mens rea. These persons therefore cannot be considered as accomplices and their evidence requires no corroboration. Where a servant of the accused was a mute spectator to the crime being committed by the accused, he cannot

be regarded as an accomplice witness as he cannot set to have participated in crime with the requisite mens rea.

Honest Trap Witness: In ***C.R. Mehta v. State of Maharashtra***, the accused acting in consort offered a sum of Rs. 3 Lacs to the Home Minister of State Government for cancellation of a detention order. The Minister giving an impression that he would consider the offer filed a complaint with Anti – Corruption Bureau and a trap was laid. While handing over the bribe money to the Minister the accused along with his three other co – accused were arrested. It was held that the complainant Minister cannot be equated with position of an accomplice and as a witness the quality of his evidence as also his general integrity being of high order conviction of the accused can be based even on his uncorroborated evidence.

Application of the Concept of Accomplice witness in various cases:

Janendra nath Ghose v. State of West Bengal the accused was tried for the offence of murder and the jury found him guilty on the evidence of the approver corroborated in material particulars. It was contended that there was a misdirection because the jury were not told of the double test in relation to the approver's evidence laid down in Sarwan Singh case.

Raghubir Singh v. State of Haryana – In this case it was observed: “To condemn roundly every public official or man of the people as an accomplice or quasi – accomplice for participating in a raid is to harm the public cause. May be a judicial officer should hesitate to get involved in police traps when the police provides inducements and instruments to commit crimes, because that would suffer the image of the independence of the judiciary.” In the present case the Magistrate was not a full – blooded judicial officer, no de novo temptation or bribe money was offered by the police and no ground to discredit the veracity of the Magistrate had been elicited.

Lachi Ram v. State of Punjab - the accused was charged with murder and was convicted on the evidence of an approver corroborated in material particulars.

On the question whether proper tests were applied in applied in appreciating the approver's evidence the Supreme Court held: "It was held by this Court in Sarwan Singh case that an approver's evidence to be accepted must satisfy two tests".

The first case to be applied is that his evidence must show that he is a reliable witness, and that is a test which is common to all witness. The fact that High Court did not accept the evidence of the approver on one part of the story does not mean that the high Court held that the approver was an unreliable or untruthful witness. The test obviously means that the Court should find that there is nothing inherent or improbable in the evidence given by the approver and there is no finding that the approver has given false evidence.

The second case, which thereafter still remains to be applied in the case of an approver and which is not always necessary when judging the evidence of the witness, is that his evidence must receive sufficient corroboration.

In the present case the evidence of the approver was reliable and was corroborated on material particulars by good prosecution witness who have been believed by the corroborated on material particulars by good prosecution witness who have been believed by the lower courts."

Conclusion:

The Courts in this country have by harmoniously reading Section 114(b) and Section 133 together laid down the guiding principle with respect to accomplice evidence which clearly lays down the law without any ambiguity. This principle which the courts have evolved is that though a conviction based upon the uncorroborated testimony of an accomplice is not illegal or unlawful but the rule of prudence says that it is unsafe to act upon the evidence of an accomplice unless it is corroborated with respect to material aspects so as to implicate the accused. This guiding principle though very clear is often faced with difficulties with respect to its implementation. While implementing this principle different judges might have different levels of corroboration for accomplice evidence and thus with no hard and fast rules relating to the extent and

nature of corroboration an element of subjectiveness creeps in which can result in injustice. Accomplice witness can be a competent witness by fulfilling certain condition. One necessary condition for being Accomplice Witness is that he must be involved in the crime. So, the Accomplice Evidence can be taken as a strong evidence when it is subject to corroboration.

REFERENCE

- 1) Jagannath v. Emperor, AIR 1942 Oudh 221
- 2) Francis Stanly v. Intelligence Officer N.C.B., Thiruvananthapuram, 2007 Cri. Lj 1157 (SC)
- 3) K. Hasim v. State of Tamil Nadu, 2005 Cri. Lj 143 (SC)
- 4) Subhash Chandra Panda v. State of Orissa, 2001 (4) Crimes 367 (DB) (Ori)
- 5) C.R. Mehta v. State of Maharashtra ,1993 Cr.Lj 2863 (Bom.)
- 6) Sarwan Singh v. State of Punjab, AIR 1957 SC 637
- 7) R.K Dalmia v. Delhi Administration, AIR 1962 SC 1821.
- 8) Janendra nath Ghose v. State of West Bengal, AIR 1959 SC 1199
- 9) Raghubir Singh v. State of Haryana, (1974) 4 SCC 560
- 10) Lachi Ram v. State of Punjab, AIR 1967 SC 792