

Authenticity of Accomplice Evidence

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Abstract:

Accomplice is dealt under Section 133 of the Indian Evidence Act. Though Accomplice has nowhere been defined in the Indian Evidence Act, therefore in ordinary sense it is viewed as a person who has taken part in the commission of crime along with other wrongdoers. This article talks about the authenticity as well as admissibility of the accomplice in the court of law. Most of the time, accomplice evidence might seem to be untrustworthy and unreliable but often it comes out as an invaluable evidence in solving the crime and delivering justice. Further it will talk about the accomplice being a competent witness and how it differs from the co-accused.

I. INTRODUCTION

Evidence is the most important part of any trial. It signifies the evident or apparent part of the facts that proves that any crime has been committed or not. It can thus either convict the accused or set him free. Evidence is defined by Bentham as "any matter of fact, the effect, tendency or design of which is to produce in the mind a persuasion affirmative or dis-affirmative of the existence of some other matter of fact."¹ In order for evidence to be admissible under evidence law, it must be material, competent and relevant.

An accomplice means a person who has taken part in the commission of a crime. When an offence is committed by more than one person in concert, every one participating in its commission is an accomplice. Though, there is no particular definition of accomplice laid down in the Indian Evidence Act, 1872 but the maxim *participes criminis*² is included in the term. A witness may deny his participation in the commission of the crime but it is the further discretion of the court to decide the reliance upon the statement of the accomplice and his competency.³

Circumstantial evidence is sometimes of very great importance. It proves links in a chain of facts which go to establish the guilt of the accused. Where there is no direct evidence and the proof is made to rest on circumstantial evidence, the principles should be kept in view in judging the guilt of accused.⁴ It was held

¹ Bentham Ev., 17

² In two cases where the person is not participes criminis is also considered as an accomplice, namely a) receivers of stolen property b) where a person has been charged with a particular offence and evidence of other similar offences by him has been admitted as proving system and intent and negating accident persons who had been accomplices in the previous offences. (R.K. Dalmia v. Delhi Administration AIR 1962 SC 1821).

³ Hussain Umar v. Dilip Singhji AIR 1970 SC10.

⁴ Chattar Singh & Anr. vs. State of Haryana 2009 (1) Crimes 11 (SC).

that the “Courts ordinarily consider it unsafe to convict any accused person on the basis of the retracted confession except where the truth of such confession is established by corroboration”.⁵

II. CATEGORIES OF ACCOMPLICE:

1. Principal offender of First Degree and Second Degree: The principal offender of first degree⁶ 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 people 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 other. Therefore, any of such criminal committing any of these crimes can be considered as an accomplice.

Two provisions in the Indian Evidence Act, 1872 deals with the accomplice touch on the subject matter. These provisions as reproduced are as under:

S.133 Accomplice:

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.

This provision thus places no limitation on the acceptance of the testimony of an accomplice against accused merely on the ground that he is an accomplice. Further, it does not impose any condition or correlation for purposes of conviction.⁷ This section is the absolute rule of law as regards to the evidence of accomplices but this essentially has to be read with the rule of prudence laid down in illustration (b) of Section 114.

S.114. Illustration (B)

The court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

This section enacts a rule of presumption but it is not a hard and fast presumption which cannot be rebutted. It is thus well settled that except in circumstances entailing an exceptional nature, it is the duty of the court to raise the presumption in section 114 illustration (b), and the legislature requires that the court should

⁵ Nand Kumar vs. State of Rajasthan, 1963(2) Cri LJ 702 (SC).

⁶ Ismail Hasan Ali v. Emperor AIR 1947 Lah. 220.

⁷ Bhubon Sahu v. The King, (AIR 1949 PC 257); K. Hashim vs State Of Tamil Nadu (2004), Appeal (cr.l.) 185 of 2004)

make the natural presumption in that section.⁸ Further, the most important issue in relation to both these sections 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.

Corroboration means independent testimony. A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only truth of that history, without identifying the persons, that is really no corroboration at all. Corroboration of the evidence is necessary because 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.

This has been laid down as the theory of 'double test'.⁹ As to the nature and extent of corroboration required, cited the opinion in *R. v. Stubbs*, namely, that the evidence of an accomplice must be confirmed not only as the circumstances of the crime, but also as to the identity of the prisoner. The evidentiary value of the statements of a witness depends upon the nature of statements, substance of the testimony and appreciation of the testimony by the court. Even a single statement may be treated as sufficient evidence, while a long narration by the witness, may not even be treated as a fact. This, however, depends upon the value of statements of a witness, which has thus emerged after cross-examination and corroboration.

III. COMPETENCY OF THE ACCOMPLICE:

An accomplice is a competent witness provided he is not a co accused under trial in the same case. An accomplice by accepting a pardon under Section 306, Code of Criminal Procedure 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, Code of Criminal Procedure before he can become a competent witness. Basically, when a person is a accomplice witness, he turns into an approver for the prosecution. The term "approver" is neither defined nor used in the Criminal Procedure Code, but is usually applied to a person, supposed to be directly or indirectly concerned in or privy to an offence to whom a pardon is granted under Section 306 of the Code with a view to securing his testimony against other persons

⁸ *Muthukumareswamy v. RILR* 35 Mad. 397.

⁹ *Sarwan Singh v. State of Punjab*

guilty of the offence. But the reasons for tendering a pardon to any person must be stated. In the cases in which a pardon is tendered, the intended approver should always be made clearly to understand the extent of the pardon offered to him : it should be explained to him that he is being tendered a pardon and will not be prosecuted in respect of such and such a case, and no others. 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.

In Bhuboni Sahu v. The Emp., eight persons were prosecuted for a murder; four of them were acquitted. Of the remaining, one appealed to the Privy Council. The evidence against the appellant consisted of (a) evidence of an accomplice who had taken part in the murder and had become an approver, (b) the confession of another accused person implicating himself and the appellant, and (c) the recovery of a cloth which the deceased was wearing and a Khantibadi in circumstances which were taken to verify the evidence of the accomplice.

The appellant was acquitted by the court. The Court observed : The combine effect of Section 133 and 114, Illustration (b) may be stated as follow: According to the former which is a rule of law an accomplice is competent to give evidence and according to the latter which is a rule of practice is almost always unsafe to convict upon his testimony alone. Therefore though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the court will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particular. The law may be stated in the words as in R v. Baskerville. There is no doubt that the uncorroborated evidence of an accomplice is admission in law. But it has been long a rule of practice at common law for the Judge to warn the jury of the danger of convicting and in the prisoner on the uncorroborated testimony of an accomplice, and in the discretion of the Judge, to advise them not to convict upon such evidence, but the Judge should point out to the jury that is within their legal province to convict upon such unconfirmed evidence.

“Credibility” and “reliability” are two best qualities of the personality of a person which provides him or her high quality of reputation, regard, respect, honour and the likes in the society. It can rightly be said that in considering the weight and value of the testimony of any witness, the appearance, attitude, and behavior of the witnesses, the interest of the witness in the outcome of the suit, the relation of the witness to the parties, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness’s statements, and all other facts and circumstances in evidence may be taken into consideration. Thus, it is solely upon the court if they find accomplice of worthy nature or not.

IV. ACCOMPLICE AND CO-ACCUSED

The confession of a co-accused (Sec. 30) is not treated in the same way as the testimony of the accomplice because-

1. The testimony of an accomplice is taken on oath and is subjected to cross examination and so is of a higher probative value.
2. The confession of a co-accused can hardly be called substantive evidence as it is not evidence within the definition of Sec. 3. It may be taken into consideration along with other evidence in the case and it cannot alone form the basis of a conviction. While the testimony of an accomplice alone may be sufficient for conviction.

V. CONCLUSION:

Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case, it would be merely confirmatory of other and independent testimony. All that is required is that there must be "some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it." The reason for this part of the rule is that-

"a man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all. It would not at all tend to show that the party accused participated in it." The corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. The corroboration need not be direct evidence that the accused committed the crime.