

A Critical Analysis of Accomplice Evidence in Criminal Trial

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ABSTRACT

The present paper explains the admissibility and reliability of accomplice as a witness. Accomplice, though not defined anywhere in the Indian Evidence Act; finds its place as a competent witness under the Act. This paper is about how an accomplice's testimony is credible and it differs from a government approver and a co accused, mentioned under Section 30 of the Indian Evidence Act, 1872.

Keywords: Admissibility, Reliability, Accomplice, Testimony

INTRODUCTION

Accomplice or *Participes criminis* is a general term which is used for all persons who participate in the commission of crime and they will always be called an Accomplice with respect to the offence committed. However the word accomplice has not been defined under the Indian Evidence Act, 1872. If these persons are put to joint trial under Section 223 of Code of Criminal Procedure, 1973 then they will be called co-accused and if one of them is granted pardon under Section 306 of Crpc (supra) and is made an approver then such person will be called a government approver and now he will not be called a co-accused but still he will be called an Accomplice. For instance:- A and B together commit an offence. A is the main offender but some evidences are lacking against him. But if we make B a government approver then the chain of circumstances against A can be completed. He will give testimony against A and can be convicted. If both A and B are main offenders it is not good to make any one of them as approver. Once a person becomes a government approver, now he is no more an accused and therefore he can give oath and become prosecution witness. The purpose of converting co-accused into approver by granting pardon is basically

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to remove the tag of accused from the person so that he can be made a prosecution witness and can be administered oath for the purpose of giving evidence. The approver's evidence is looked with great suspicion. If it is found trustworthy it can be decisive in securing conviction.¹The accomplice, after pardon has been granted becomes a competent witness and there is no question mark upon his competency to give testimony against other accused. As per Section 118, any person who is capable of understanding the questions asked to him and of giving rational answers to those questions will be considered to be a competent witness and accordingly an Accomplice who is no more an accused is a competent witness. The only issue regarding the accomplice is whether his testimony is reliable and if yes, then how much reliable.

RELIABILITY OF ACCOMPLICE EVIDENCE

Regarding the Reliability of an evidence, the Evidence Act is silent and it is the Judge's judicial mind which has to decide upon the issue of reliability. An Accomplice in one case may be highly reliable and in other case his testimony may not be reliable. Reliability will depend upon circumstances. His testimony is to be corroborated by other evidences also and if he is not able to answer properly, then he may not be a reliable witness. If accused is convicted solely on the basis of Accomplice Evidence, then per se it will not be illegal. It depends upon reliability of Accomplice evidences. **Rule of Prudence** requires that don't rely only on the accomplice's testimony because he has chance to fabricate the story to favour the prosecution case. **Rule of Law** says that Accomplice can be a competent witness. However there will always be chances that Accomplice will fabricate or mould the story in favour of prosecution. He may be overenthusiastic to favour the prosecution. Therefore it is advised not to rely on the testimony of Accomplice. The Court may raise presumption under Section 114 of Indian Evidence Act that he is not trustworthy or is trustworthy.

ARTICLE 20(3) AND ACCOMPLICE'S TESTIMONY

Article 20(3) of the Constitution provides Protection against self incrimination i.e. no

¹Jasbir Singh versus Vipin Kumar Jaggo, AIR 2001 SC 2734

person 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.

Categories of Accomplices-

1. Principals in the first and second degree
2. Accessories before the facts
3. Accessories after the fact

Section 114, Indian Evidence Act –Court may presume existence of certain facts.

Section 114 creates a rule of presumption and enables the court to raise a presumption of any fact. The various kinds of presumption of some certain specific facts have already been expressly declared under the various sections in evidence act and in that light Section 114 can be seen as a residuary provision which expressly uses the term “may presume” and enables the court to presume any fact. The list given in Section 114 is not an exhaustive list of illustrations and otherwise also as per the rule of interpretation- illustrations are only exemplifications of the main section. Therefore the Court is free to raise the presumption of any fact according to its own judicial discretion (judicial mind).For instance, presumption of marriage on the basis of long cohabitation, presumption of guilt on the basis of last seen together theory, presumption of Res ipsa loquitur under law of tort to presume negligence of defendant. Similarly, the court has the discretion to presume that an Accomplice is unworthy of credit as given under illustration b of Section 114. At the same time, the court is also free to presume in light of the circumstances that the Accomplice is worthy of credit.The accomplice’s testimony should not be blindly relied upon as a Rule of Prudence as the accomplice is likely to fabricate the facts in support of prosecution as prosecution has granted him the pardon. Moreover he would always be interested in presenting the facts in such amanner that he is able to exculpate himself. Fabrication by him is quite possible as he knows the detailed facts of the case. In *Bhuboni Sahu versus The King (1949)*² and in *Dagdu and others etc versus State of Maharashtra (1977)*³, it was held that there is no real conflict between Section 133 and Section 114, illustration b of Indian Evidence Act. Section 133 simply declares that the conviction of an accused is based solely upon an uncorroborated

²AIR(1949) 51 BOMLR 955

³AIR 1579, 1977 SCR(3) 636

testimony of an will not be per se, illegal. The section does not declare that the conviction has always to be based upon the uncorroborated testimony of Accomplice. It is just an enabling provision which enables the court to convict the accused on the testimony of Accomplice alone but it does not make it mandatory; on the other hand illustration b of Section 114 enables the court to raise a presumption that the Accomplice is unworthy of credit. It does not make it mandatory for the court to do so. The words used are “may presume”. At the same time, in latter part of Section 114, it is provide that in proper circumstances, the court may not raise such presumption of it finds on the basis of preponderance of probabilities that the Accomplice is worthy of credit then the court may also presume that he is trustworthy. Both the Sections are enabling and the crux of both the Sections is that if the court finds that the Accomplice is trustworthy then it may rely upon accomplice’s testimony with corroboration or without corroboration but if the circumstances suggest that he is not worthy of credit then the court would look for corroboration by other circumstantial evidences. It has to be noted that the Accomplice has to be subjected to cross examination and the court can also ask questions under Section 165 of Indian Evidence Act. After all this examination, if the court finds that the Accomplice is worthy of credit then the court may rely upon his testimony with or without corroboration or it may seek further corroboration and if it finds that he is unworthy of credit then the court may not rely upon the accomplice’s testimony. However the court broadly suggested as a rule of Prudence that the accomplice’s testimony should be corroborated by the other evidences. The court also held that the harmony between Section 133 and illustration b of Section 114 is already established.

DICHOTOMY BETWEEN SECTION 133 AND ILLUSTRATION (B) OF SECTION 114

In the case of Soma Sundaram @ Somu versus State represented by Deputy Commissioner of Police⁴, it is usually unsafe to convict an accused on the basis of sole evidence wife the Accomplice. The court cited the judgement of K. Hashim versus State of Tamil Nadu⁵and held that the above rule is only a rule of Prudence and not a rule of law. The evidence of Accomplice needs to be corroborated in material particulars by other circumstantial evidences and a mere corroboration by

⁴Appeal (Crl.), 403 of 2010

⁵Appeal (crl.) 185 of 2004

the testimony of another accomplice is not sufficient rather the corroboration should be on the basis of some other circumstantial evidences. For instance, A is an accomplice and B is also an accomplice. A makes a statement and B also gave testimony. A's testimony is corroborated by B's testimony that is not sufficient. A's testimony should be corroborated by some other circumstantial evidences. The corroboration by the other circumstantial evidences need to be so strong that the circumstantial evidences in themselves are sufficient to establish the guilt rather the corroboration to the extent that it should clearly suggest that the accomplice evidence is true. The combined effect of Section 133 and illustration b of Section 114 is that, even though theoretically it may be possible to convict the accused only on the basis of accomplice evidence. It would be prudent according to judicial mind that Accomplice evidence alone should not be made the basis of conviction. The Rule of Corroboration of an accomplice may be as follows:-

- It is not necessary that the story of the accomplice should be corroborated with every detail of the crime.
- The corroboration (Section 157 of the Indian Evidence Act) need not be by direct evidence that the accused committed the crime.
- The corroborative evidence must be one which implicated the accused.

CONCLUSION

Thus it is clear from the settled principles of law that Accomplice is a competent witness after being corroborated. The courts have laid down guidelines with regard to accomplice evidence by bringing harmony between Section 133 and Illustration b of Section 114 of the Indian Evidence Act.

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