

LL.B 3 years IV sem  
Paper III Law of Evidence  
Study Material / Unit IV

Accomplice

**Evidence of Accomplice (Sec 133 and sec 30 of the Evidence Act)**

When two or more persons committed an offence in concert, everyone participating in commission of the offence is an accomplice. An accomplice is a person who has taken part in the commission of a crime, a guilty associate or partner in crime or who sustains such a relation to the criminal act that he could be jointly indicated with the principal.

In *Davies v Director of Public Prosecutions*, 1954 AC 378, accomplice has classified as

1. Participes criminis participants in crime, whether, principal or accessories before or after the fact or person committing, procuring, or aiding or abetting
2. Receivers in respect of thieves from whom they receives goods, on the trial of the latter for larceny
3. Parties to crimes which may be proved as facts similar to the offence charged

Thus following persons are accomplice.

1. person who commits the crime,
2. person who is present and assisting in preparation of crime
3. person who counsels, connives at encourages or procures the commission of crime
4. person who knows that offence has been committed and who receives, comforts or assists the offender to escape from punishment, rescues from arrest,
5. Bribe givers are accomplice (*pyre mohan v State*. AIR 1966All 358)

Though, followings persons are not accomplice

1. When a person committed an offence under threat, or compulsion, etc, because in that circumstances he has not committed offence voluntarily.
2. A person who witness an offence, but does not inform the authorities or others out of fear
3. Detectives or paid informers and trap or decoy witnesses are not accomplices. A Court may convict on an uncorroborated testimony f trap witnesses if it is satisfied of their truthfulness. (*Prakash Chand v State* 1979 SC 400.)
4. Bribe Givers are accomplices

An accomplice is called as an 'approver' if he granted pardon under sec 306 of the Code of Criminal Procedure and become prosecution witness.

An accomplice is a competent witness if he is not being tried in the case in which he is required to give the evidence, but in case if he himself tried, he is incompetent to be a witness because being an accused he cannot be examined on oath. Therefore, an accomplice can be a witness in a case against whom he has committed offence unless, he is pardoned,

discharged, acquitted or convicted. When he becomes a prosecution witness in the case against whom he himself committed an offence.

When an accomplice becomes the prosecution witness against the accused with whom he acted together in the commission of offence, his testimony becomes questionable because he himself was offender and turns to witness. Evidentiary value of the accomplice's evidence has to be determined in accordance to the principles provided under sec 133 and 30 of the Indian Evidence Act.

### **Sec 133**

**“An Accomplice is a competent witness against an accused person; and conviction is not illegal merely because it proceeds upon an uncorroborated testimony of an accomplice”**

### **Illustration b of the sec 114**

**“An accomplice is unworthy of credit, unless he is corroborated in material particulars”**

Sec 133 and the illustration b of the sec 114 are not antithesis to each other, because sec 114 is concerned with the 'may presume' i.e. Court may presume certain state of facts. It is not conclusive presumption. On the other hand sec 133 provides a definite rule to the Court that to convict on the uncorroborated testimony of an accomplice, but since he is criminal himself with others his testimony is untrustworthy, hence, guided by the illustration b of the sec 114. It means if it is necessary the Court should presume that he is unreliable unless his statements are verified by some independent evidence. *Dagdu v State of Maharashtra*, (1977) 3 SCC 268.

Therefore, sec 133 lays down a rule of law, while sec 114 illustration b lays down a rule of prudence. In judicial interpretation, the evidence of accomplice is accepted under rule of prudence.

### **Corroboration requires for the evidence of the Accomplice**

The evidence of the accomplice requires the double test

1. Evidence must be reliable
2. It must be materially corroborated

Reliability of evidence is required because

Firstly, because he, himself participated in commission of offence, secondly, his tendency to shift the guilt towards their companion's shows that he is unreliable to his companions, hence may be unreliable to Court too and thirdly, on being approver, he has been favoured by the State and therefore is likely to favour the State.

Thus, reliability of an approver is more important and it comes first, after that corroboration is required. When the reliability has to be examined, if it is found that witness is credible and cogent the Court can record the conviction even on the uncorroborated testimony of the accomplice. There is proposition about the credibility of the testimony of the accomplice that it must be corroborated in material facts does not mean that there must be cumulative or independent testimony to the same facts which he has testified. (*Bhuboni Sahu v King* (AIR 1949PC 257)).

The nature and extent of corroboration is provided in R v Bakervillie (1916 2KB 658) as follows

1. It is not required for the corroboration of a fact related to the statement of an accomplice that each and every fact must be independently confirmed only material circumstances to the case is sufficient.
2. As far as identity of the accused is concerned it must be confirmed, it can be said as it is not enough that offence has been committed but it is required to confirmed that accused has committed it
3. The corroboration must be through some other facts, i.e. by other evidence than accomplice. It means one accomplice cannot corroborate other
4. Corroboration need not be through direct evidence, it may be a circumstantial evidence

The Supreme Court affirmed this principle in Rameshwar Prasad v State of Rajasthan (AIR 1952 SC 54). Thus though the accomplice is competent to give evidence, it is a rule of practice that it would almost always be unsafe to convict upon his testimony alone. As a matter of practice it is required that evidence of the accomplice should not be accepted without corroboration in material particulars. Further, such corroboration must connect the accused with crime and also that this corroboration must be from an independent source, meaning thereby one accomplice cannot corroborate another (Khokhn Giri v State of West Bengal AIR 2017 SC 668).

If several accomplices give evidence implicating the accused, the Court may act on it if it is satisfied that there was no opportunity for prior concert. (Harron Haji v State of Maharastra (AIR 1968 SC 832).

Therefore, it can be said that, the law is not that the evidence of an accomplice deserves outright rejection if there is no corroboration. What is required is to adopt great circumspection and care when dealing with the evidence of an accomplice.

### **Evidentiary value of the Accomplice/ Approver evidence**

In case, conviction of the accused is solely depends upon the testimony of an accomplice, the evidence of the accomplice must pass the test of reliability and corroboration as mentioned above.

An approver is most unworthy person, and if he is bargaining for his immunity before the Court, he must have to prove his credibility toward the Court. The test of credibility required,

If the story he relates involves him in the crime and appear intrinsically to a natural and probable catalogue of events that had taken place. The Story if given of minute details according with reality is likely to save it from being rejected *brevi manu*.

Once that hurdle is crossed , the story given by the approver so far as the accused on trial is concerned , must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt.

### **Evidence of Prosecutrix (victim of sexual offence)**

An evidence of a prosecutrix of a sex offence cannot be put on the same footing as accomplice. She is undoubtedly a competent witness. Her evidence has such weight as the evidence of an injured person. It is not mentioned in the Evidence Act, that her evidence cannot be accepted unless corroborated on material facts (State of Maharashtra v C.K. Jain AIR 1990 SC 658). The nature and extent of the corroboration of the statement of a prosecutrix in sex cases vary with the circumstances of each case. The nature of corroborative evidence should be such as to lend assurance that the evidence of the prosecutrix can be safely acted upon. (See M. Moneer law Of evidence, pg 452)

When the testimony of the prosecutrix did not inspire the confidence and poses material distinction with the prosecution case, it cannot rely to act upon (State v Rehan SCC Del 2020, 172).

In other case, it was held by the Apex Court that mere prosecutrix become hostile is not a relevant fact, and it does not efface the evidence in case of sexual assault upon her. (See the State v Sanjeev Nanda (2012(8)SCC 450 and Hemudan nanda Gandhvi v State of Gujarat 2018SCC online 1688)

### **Confession of Co accused and Accomplice Evidence**

**“When more than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession”.**

The Confession of a Co accused is not treated as same as an accomplice's evidence because

1. Confession of a Co accused is not an evidence because it is not taken on oath nor it is cross examined while accomplice's evidence is taken on oath and is also cross examined. Hence, higher probative value to the accomplice's evidence is given.
2. Confession of a co accused can be taken in the consideration only in the case in which he jointly tried with other offenders and conviction cannot be based solely on it, while conviction is not illegal, if it is based only on the testimony of the accomplice.
3. Though, an accomplice is also unworthy of credit, but his reliability is tested before the court and law of prudence is that his evidence must be corroborated in material particulars.

Therefore, above all sec 133 and sec 30 are required and important mostly in cases of organised crimes, as the evidence of the accomplice or co accused are the only measure for the conviction.

