

CHAPTER-VI

VALUE OF ROLE AND STATEMENT

The statements of a witness have different evidentiary value attached to it depending upon the substance, relevance, nature of the evidence as well as the character and person of witness leading to its application by the judge guided by various principles laid down on various legal provisions in each and every case. Thus depending upon the facts and circumstances even a single sentence of a witness be treated as sufficient enough to reach to a conclusion while lengths of detailed examinations may be of no value at all. In this chapter an attempt has been made out to study and analyze the value and role of the testimony of accomplices statement. Though the statement of an accomplice can be treated as sufficient enough to lead to the conviction of an accused but still his testimony be read and appreciated with great caution as there always is a danger in accepting his whole story as truthful since he may be guided by his own selfish and discriminate motives. It is therefore necessary to critically examine –

- (i) a motive on his part to shift the guilt from himself than to state the truth.
- (ii) a motive to make his share in the crime as slight as possible in order that he may not be too much lowithwered in the estimation of the public,
or

- (iii) a notion that will always exist in the minds of men liable to punishment that they will benefit by procuring the conviction of others, or
- (iv) a desire and an opportunity to save friends or to gratify animosities, and
- (v) there is in respect of his story the difficulty of testing the truthfulness, as he can easily mix up truth with falsehood in such a way to make the falsehood plausible

Since, an accomplice is a man who prima facie by giving his evidence against his associates commits by his disclosure an act of treachery on his associates. Therefore, the utmost caution is necessary in admitting or using the evidence of an accomplice because¹.

1. an accomplice who betrays his associates, is not a fair witness; and
2. It is possible that he may, to please the prosecution, weave false detail into those which are true; and
3. his whole story appearing true, there may be no means at hand to sever the false from that which is true.

This position was summarized as that by the Supreme Court nicely in the following words:

“The law as to accomplice evidence is well settled. The Evidence Act in Sec. 133 provides that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The effect

¹ Banu Singh Vs. R. 10 CWN 962

of this provision is that the Court trying an accused may legally convict him on the single evidence of an accomplice. To this there is a rider in illustration (b) to sec. 114 of Act which provides that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This cautionary provision incorporates a rule of prudence because an accomplice, who betrays his associates is not a fair witness and it is possible that he may, to please the prosecution, weave false details into those which are true and his whole story appearing true. It is for his reason that Courts before they act on accomplice evidence, insist on corroboration in material respects as to the offence itself and also implicating in some satisfactory way, however, small, each accused named by the accomplice. In this way, the commission of the offence is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the inclusion by the accomplice of an innocent person is defeated. This rule of caution or prudence has become so ingrained in the consideration of the accomplice evidence as to have almost the standing of a rule of law.”

“An accomplice is a competent witness and there is no absolute rule of law which enacts that the conviction on the evidence of an accomplice is a bad but there is an established practice, founded on the judicial experience of generations which requires corroboration by some untainted evidence and that in a material particular pointing not only to the crime but to the participation of the accused in that crime.”²

² Haroom Haji Abdullah V. State of Maharashtra, AIR 1968 SC 832

Again it was laid down by the Supreme Court in *Sarwan Singh V. State of Punjab*³ the evidence of an approver must be scrutinized in two stages or more precisely, it has to fulfill two tests for its acceptance.

(i) It must be natural and credible. Where this is prima facie lacking, there is really no question of further corroboration and the prosecution can only rely upon other pieces of evidence.

(ii) Even if a Court is inclined to accept the evidence as natural or convincing it must be corroborated in material particulars with regard to the participation of the accused concerned. Having accepted pardon for his immunity the approver must prove his worthiness for his credibility. In order to be acted upon, the evidence of an approver must fulfill a double test. His evidence must show that he is a witness of truth. If this test is satisfied, it must receive sufficient corroboration from reliable sources. The evidence of an approver is to be corroborated in material particulars and qua each accused.⁴

The leading case in which the principles are fully enunciated that set forth is *Rex. V. Baskerville*⁵ and these rules have been reiterated by the Supreme Court with the declaration that the law is precisely the same in India, as the learned Judges stated in *Rex v. Baskerville*.

“After examining these and the other authorities to the present date, we have come to the conclusion that the better opinion of the law upon this point is that stated in Reg. V. Stubbs⁶ by Parke. B. namely, that the

³ AIR 1957 SC 637

⁴ State of Orissa Vs Nazrul Ali Sekh 1985 Cr. L.J. 1311.

⁵ (1916) 2KB 658

⁶ Dears 555

evidence of an accomplice must be confirmed not only as to the circumstances of the crime, but also as to the identity of the prisoner... ..

It is sufficient if there is confirmation as to a material circumstance of the crime, and of the identity of the accused in relation to the crime.”

Scrutiny of the Indian authorities leaves no doubt that the law is the same here, and that the corroboration should extend to the identity of the accused person.

The corroboration of a co-accused in a judicial confession is, naturally, of the weakest character, and can only be considered in order to be thrown into the scale, as certain authorities have raised it, when other evidence is also fairly adequately available.⁷

Corroboration is required of an accomplice’s evidence only to enable the Court to convict an accused as it is not prudent to base a conviction on the uncorroborated evidence of an accomplice. Corroboration by itself cannot make the story of the accomplice accepted when on the face of it, it has to be rejected.⁸

A conviction therefore ought not to be based on the testimony of the approver unless it is corroborated in material details not only with regard to the general story narrated by him but also with regard to the corpus deficit and the identity of the accused. It is so even though his testimony does not suffer from inherent defects or improbabilities.⁹

It can not be laid down as matter of law that the evidence of witness who support the statement of an approver is not corroborative evidence

⁷ In re Chinnasami AIR 1960 Mad 462

⁸ Prana Nath Patnaik v. Bohamali Patnaik AIR 1958 Ori 228

⁹ In re K Muttiza AIR 1958 Andh Pra 255

merely because their evidence was known to the police before the approver was given pardon. In such a case, it can, however, be said that the approver might have been tutored by the police to make a statement fitting in with the evidence already known to the police.¹⁰

It is possible that a person who has been granted a pardon may, in order to avoid subsequent prosecution, give a statement implicating all the other accused persons. But no accused persons should be convicted unless the statement of the approver is corroborated by independent evidence. The corroboration need not be of a kind which proves the offence against the accused. It is sufficient if it connects the accused with the crime.¹¹

Stating the legal position relating to the testimony of an approver, the Supreme Court in the case of Ram Narain.¹²

1. Section 133 of the Evidence Act renders admissible the uncorroborated testimony of an accomplice.
2. But this section has to be read along with Illustration (b) to Sec. 114 of the Evidence Act.
3. The statute thus permits the conviction of an accused person on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in Illust. (b) of Sec. 114 strikes a note of warning cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars.

¹⁰ Kesar Singh v. State AIR 1954 Punj 286

¹¹ Uma Krishna vs. State of Ajmer AIR 1956 Ajmer 57.

¹² Ram Narain Vs State of Rajasthan AIR 1973 SC 1188.

This rule of caution is traceable to the fact that an accomplice witness from the very nature of his position is a suspect. The rule is guided by long human experience and has become a rule of prudence of general application. The courts, therefore, consider it prudent to look for corroboration in material particulars for sustaining the conviction of an accused person.

4. One can, of course, visualize an accomplice who is genuinely repentant for the commission of his crime and truly desires to make a clean breast of the whole affair by way of penitence. But even in such cases, the court has to judicially determine the extent to which his uncorroborated testimony can be considered as trustworthy by looking to-

(a) the other relevant material and

(b) the attending circumstances on the basis of which the accused can be safely convicted.

5. The rule which seems to emerge from the foregoing discussion and judicial decisions, is that the necessity of corroboration as a matter of prudence, except when it is safe to dispense with such corroboration, must be clearly present to the mind of the Judge.

It was held that corroboration is not for curing any defect in the testimony of the accomplice or to give validity to it but it is only to enable the court to have moral conviction about it being a true version in order to embolden the court to act upon it and not to validate it.¹³

¹³ Kuruchiyan Kunhaman v. State of Kerala, 1974 Ker. LT 328.

Again, in the case of *Chonampara Chellapan v. State of Kerala*.¹⁴

- (a) The law is well-settled that the Court looks with some amount of suspicion on the evidence of an accomplice witness which is a tainted evidence.
- (b) In view of Sec. 133 of the Evidence Act, the evidence of an accomplice witness should not be accepted unless corroborated.

At the same time, corroboration must be in respect to material particulars and not with respect to each and every item however minor or insignificant it may be.

Actually the requirement of corroboration is a rule of prudence which the Courts have followed for satisfying the test of the reliability of an approver and has now been crystallized into a rule of law.

It is equally well-settled that one tainted evidence cannot corroborate another tainted evidence because, if this is allowed to be one, then the very necessity of corroboration is frustrated.

The evidence of a person who allows himself to be convicted upon his confession made in the hope of being made an approver must be viewed with all the suspicion which ordinarily attaches to the evidence of an accomplice.

The utmost caution is necessary in admitting or using the evidence of an approver. Its evidentiary value depends considerably upon the circumstances under which his evidence is tendered. Blackburn, Mellor

¹⁴ AIR 1979 SC 1761 that

and Lush JJ., were of opinion that the evidence of an accomplice not tried under the same indictment was admissible, but that the evidence though admissible was tainted and subject to strong observations as to its weight.

1. Meaning of the word corroboration:-

According to Halsbury's Laws of England,¹⁵ the word 'corroboration' is not a technical term of art; it means by itself no more than evidence tending to confirm, support or strengthen, other evidence.

Corroboration is independent, admissible, relevant credible implicating the accused in the offence in a material particular: (a) admissible; (b) relevant; (c) credible: "The essence of corroborative evidence is that one creditworthy witness confirms what another creditworthy witness has said."¹⁶; (d) independent: The evidence adduced as corroboration must come from a source independent of the witness requiring corroboration; (e) implicating the accused in a material particular: the evidence must show not merely that the witness is honest, but that the accused is implicated.

There is nothing to suggest that the word "corroboration" in India has a specified and different meaning from that which it bears in other countries. Corroboration means independent testimony. The nature of the corroboration required is not mere evidence of a tainted kind but fresh evidence of an untainted kind.¹⁷ LORD ABINGER, remarked.¹⁸

¹⁵ IV Ed., Vol II page 268, para-454.

¹⁶ DPP v. Hester (1973) AC 296.

¹⁷ Nga Aung v R, 1937 Rang 110.

¹⁸ Ambika v R 35 CWN 1270.

"In my opinion that corroboration ought to consist in some circumstances that affect the identity of the party accused. 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. If a man were to break upon a house and put a knife to your throat, and steal your property, it would be no corroboration that he had stated the facts correctly, that he had described how the person did put a knife to the throat, and did steal the property. It would not at all tend to show that the party accused participated in it.....The danger is, that when a man is fixed, and knows that his guilt is detected he will purchase immunity by falsely accusing others."

Explaining the concept of corroboration, in *Saravanabhavan v. State of Madras*¹⁹ a case decided by a Constitution Bench of 5-Judges Wanchoo. J., on behalf of himself and Ramawamy. J. held that generally speaking the corroboration of the evidence of an accomplice is of two-kinds:

- (1) 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,
- (2) Secondly after the Court is satisfied that the approver's statement is credible and his part in the crime is corroborated by other evidence, the court seeks corroboration of the approver's

¹⁹ AIR 1966 SC 1273 at page 1279.

evidence with respect of 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.

Thus, if the court is not satisfied on the first stage, the second stage does not arise. This principle is succinctly presented in Halsbury's Laws of England²⁰ in the following words: "Corroboration is required or afforded only if the witness requiring or giving it is otherwise credible; if a witness testimony falls on its own inanity the question of his needing or being capable of giving corroborating does not arise."

Similarly it was stated in *Sarwan Singh Rattan Singh v. State of Punjab*²¹ that: "But it must never be forgotten that before Court reached the stage of considering the question of corroboration and its adequate or otherwise, the first initial and essential question to consider that whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver's evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver."

²⁰ IV Ed Vol II page 268, para 454.

²¹ AIR 1957 SC 637.

However, the two areas of corroboration are not two separate, watertight compartments and the evidence as a whole will have to be examined to reach conclusions on both aspects.²²

A similar view was expressed in *Saravanabhavan v. State of Madras*²³ by Wanchoo J., on behalf of himself and Ramaswamy J., when he observed. "This is not to say that the evidence of an approver has to be dealt with in two water tight compartments; it must be considered as a whole along with other evidence. Even so, the court has to consider whether the approver's evidence is credible in itself and in doing so it may refer to such corroborative pieces of evidence as may be available."

Testimony of approver should be strengthened by corroboration but it is impossible to lay down any rigid formula as to what kind of evidence should be treated as corroboration. The following two principles are kept in view:

- (1) The corroboration must come from independent source; testimony of each accomplice would not be sufficient to corroborate that of the approver.
- (2) The corroboration need not be by direct evidence; it is enough if it be by circumstantial evidence.²⁴ Though an approver, an accomplice is a competent witness, yet to base conviction of other accused persons court should require corroboration in material particulars which mean there should be some independent evidence tending to

²² Balwant Kaur v. Union Territory of Chandigarh, AIR 1988 SC 139 at p. 144.

²³ AIR 1966 SC 1273 at p. 1279.

²⁴ Sumer Singh v State of Haryana 1977 Cr LJ (Notes) 32.

criminate the particular accused in the commission of the crime.²⁵ Corroboration of an accomplice (here approver) must come from an independent source.²⁶ When there is a chain of circumstantial evidences not explainable by any other hypothesis except that the accused is guilty, it may furnish adequate corroboration of the testimony of approver whereon conviction may be based.²⁷

2. The Nature and Extent of Corroboration:-

A corroboration does not mean that there should be independent evidence of all the facts which have been relate by an accomplice. "Indeed if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential in the case." The rule of corroboration of an accomplice may be stated as follows:

- (1) It is not necessary that the story of the accomplice should be corroborated in every detail of the crime since if this were so the evidence of the accomplice would be unnecessary.
- (2) The corroboration need not be by direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.
- (3) The corroborative evidence must be one which implicates the accused, i.e., which confirms in some material particulars not only the evidence that the crime was committed but also that the accused committed it.

²⁵ Dogdu Vs State of Maharashtra AIR 1977 SC 1579.

²⁶ Rabidas vs State of Orissa 1976 Cr LJ 2004.

²⁷ Maghar Singh vs State of Punjab AIR 1975 SC 1320.

- (4) The corroboration must be by some evidence other than that of another accomplice.

As regards corroboration of accomplice witnesses, it is not necessary that there should be independent corroboration of every material circumstance. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. The corroboration need not be direct evidence. It is sufficient if it is merely circumstantial evidence of the connection of the accused with the crime.²⁸

What the law requires in the case of an accomplice's evidence is that there should be such corroboration of the material parts of the story connecting the accused with the crime as will satisfy reasonable minds that the approver can be regarded as a truthful witness. The corroboration need not be direct evidence of the commission of offence by the accused. It is merely circumstantial evidence of his connection with the crime it will be sufficient and the nature of corroboration will depend on and vary with the circumstances of each case.²⁹

Ordinarily an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his

²⁸ State of Bihar vs Basawan Singh. AIR 1958 SC. 500.

²⁹ K.K. Jadava v. State of Gujarat, AIR 1966 SC 821; Sohan Singh v. State, AIR 1964 Punj. 130;

testimony.³⁰ But although in ordinary criminal trials, it is the settled practice to require other evidence in corroboration of that of all accomplice; yet the manner and extent of the corroboration required are not so clearly defined; but it should be substantial.³¹ Some judges have deemed it sufficient, if the witness be confirmed in any material part of the case; others have been satisfied with confirmatory evidence as to corpus delicti only; but others, with more reasons have thought it essential that corroborative proof should be given of the prisoner having actually participated in the offence: and when several prisoners are tried, the confirmation should be required as to all of them, before all can be safely convicted.³² The last is undoubtedly now the prevailing opinion, the confirmation of the witness, as to the commission of the crime, being considered no confirmation at all, as it respects the prisoner. For, in describing the circumstances of the offence, he may have no inducement to speak falsely, but on the contrary every motive to declare the truth, if he wishes to be when he shall afterwards endeavour to fix to declare the truth, if he wishes to be believed when he shall afterwards endeavour to fix the crime upon the prisoner.³³ It is also the rule here that corroboration must relate to the crime, identity of each prisoner and material circumstances.

The corroboration required is corroboration in material particular [S. 114 illus (b)] connecting or tending to connect each of the accused with the offence.³⁴ It is not enough that the corroboration shows the witness to

³⁰ *Ravinder v. State A* 1975 SC 856.

³¹ *R v Tate*, 1908, 2 KB 680.

³² *R v Stabbs* 1855, 25 LJMC 16.

³³ *R v Farler* SC & P 106; *R v Wilkes*, 7C & P 272. *R v Moores*. 7C & P 270; *Tays* 969.

³⁴ *Hanchuni v R*. 34 CWN 390; *Rebati v R*. 32 CWN 945.

have told the truth in matters unconnected with the guilt of the accused.³⁵ Corroboration of an approver in a trial under s 400 1P Code must connect the accused with the offence, viz, the association of a gang for the business of habitually committing dacoity.³⁶

There should be corroboration on material particulars and qua each accused. One of the prosecution witness said that the approver had made a confession of his participation in the murder. The other witness stated that he prepared the knife at the instance of the accused nine weeks before the murder. The statement of the first witness was no corroboration of the approver, nor was the statement of the other witness corroboration as the time gap was great. The finding of the knife at the instance of the first accused was also no corroboration of the approver's story.³⁷

The corroboration need not be of a kind which proves the offence against the accused. It is sufficient if it connects the accused with the crime.³⁸ The corroboration need not consist of evidence which standing alone would be sufficient to justify the conviction. All that is required is that there should be sufficient corroborative evidence to show that the approver is speaking the truth with regard to the accused that he seeks to implicate.³⁹

It is not necessary that there should be independent confirmation of every material circumstances in the sense that the independent evidence in

³⁵ R v Baskerville, 1916, 2 KB 658; Jamirudding v R. 29C 786.

³⁶ Kadere Sardar v R 16 CWN 69.

³⁷ Bhiva Doulu v. S. 41963 SC [599]

³⁸ Swaminathan v S. A 1957 SC 340.

³⁹ Bisnupada v Rs. A1945 C 411: Avtar Singh V S. A1960, Pu 364, Rameshwar v S A1952-SC 54.

the case apart from the testimony of the complainant or the accomplice should in itself be sufficient to sustain conviction. 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.⁴⁰ Independent corroboration does not mean that every detail must be corroborated by independent witnesses. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true. Corroboration need not be direct; it may be circumstantial.⁴¹ In a conspiracy case if there is corroboration not only of the general facts of the existence of the conspiracy but also of the participation in it of any particular accused, corroboration of all the specific acts would not be necessary unless the evidence of the accomplice is intrinsically open to suspicion.⁴² If there be any suspicion of false implication the confession must be discarded as of no probative value. It is only when false implication is excluded as of no probative value. It is only when false implication is excluded after scrutiny that confession of a co-accused can be used to lend assurance to other evidence.⁴³ When the approver's evidence makes a deep impression of veracity, the minimum of corroboration is necessary.⁴⁴

Independent corroboration need not cover the whole of the prosecution story or even all the material particulars. For that would render the evidence of the accomplice wholly superfluous. On the other hand

⁴⁰ Rameshwar v S A 1952, SC 54 1952 SCR 377, Haroon v S. A1968 SC 833.

⁴¹ S. V. Basawan, AIR 1958 SC, 500.

⁴² Satyanarayan v R. 22 P 681.

⁴³ Haroon v S. A1968 SC 832.

⁴⁴ Gopaldas v R. 1944, Kar. 454.

corroboration in major particulars or incidental details does not afford the necessary assurance.⁴⁵

The judge should give a broad indication of the sort of evidence which the jury, if they accept it, may treat as corroboration, but he is not excepted to refer in the summing up to every piece of evidence which is capable of amounting to corroboration.⁴⁶

The independent corroborative evidence must not merely render the story to be probable and believable with respect to the commission of the offence but it must in some reasonable way either connect or tend to connect the accused with the commission of the offence; in other words, such additional evidence, whether direct or circumstantial must come from an independent source and must confirm in material particulars, the version given by the accomplice that the accused committed the crime.

This rule which has since received the approval of the Supreme Court, is based on experience and is in no small degree due to the tendency peculiarly prevalent in our country to include the innocent with the guilty, it has been felt not to be easy for the courts to guard against this danger. As observed by *Bose, J., in Kashmira Singh v. State of Madhya Pradesh*,⁴⁷ the only real safeguard against the risk of condemning the innocent person with the guilty lies in insisting on independent evidence which in some measure implicates such accused.⁴⁸

⁴⁵ Sarvan Singh v S. A1957 SC 637.

⁴⁶ R v Goddard & c. 1962, 3 All ER 582.

⁴⁷ AIR 1952 SC 159

⁴⁸ Autar Singh v. State, AIR 1960 Punj 364.

In discussing the evidence of the approver, Court should not segregate the incidents deposed by the approver and seek their corroboration in isolation. Indeed, the Supreme Court in *Rameshwar v. State of Rajasthan*⁴⁹ lay down that the rules of practice were clear at least to the following extent.

It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent the rules are clear:

First, it is not necessary that there should be independent confirmation of every material circumstances in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction.

Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identity must extend to all the circumstances necessary to identify the accused with the offence. Again all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the

⁴⁹ AIR 1952 SC 54.

witness's story that the accused was the one or among those, who committed the offence.

Thirdly the corroboration must come from independent sources and ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course, the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based will not be illegal.

Fourthly the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.

In this connection, their Lordships have also considered the effect of Sec. 157 of the Evidence Act. It has been pointed out that this section makes no exceptions. Provided the condition prescribed that is to say, "at or about the time, etc." are fulfilled there can be no doubt that such a statement is legally admissible in India as corroboration. The weight to be attached to it is of course another matter and it may be that in some cases the evidentiary value of two statements emanating from the same tainted source may not be high but in view of Sec. 118, its legal admissibility as corroboration cannot be questioned.⁵⁰

It follows, therefore, that it is not necessary that there should be independent confirmation of every material circumstances in the sense that the independent evidence in the case, apart from the testimony of the accomplice should in itself be sufficient to sustain conviction. Then again,

⁵⁰ State of Bihar v. Srilal, AIR 1960 Pat 459.

the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect, or tend to connect, the accused with it by confirming in some material particular the testimony of the accomplice that the accused committed the crime. This does not mean that the corroboration as to identity must extend to all the circumstances necessary to identify the accused with the offence. All that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witnesses' story that the accused was the one, or among those who committed the offence. To put it in the words of Bose, J.....

"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 fact of the case, and if the confirmation be only on the truth of 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."⁵¹

The corroboration must come from independent sources but it need not be direct evidence that the applicants committed the crime. What the law requires is that there should be such corroboration of material part of the story connecting the accused with the crime as will satisfy the reasonable minds that he could be regarded as a truthful witness. In other words, it is sufficient if it is merely circumstantial evidence of their connection with the crime for if it is otherwise, many crimes which are

⁵¹ Rameshwar Singh v. State of Rajasthan AIR 1952 SC 54.

usually committed in secret, such as offences with females or unnatural offences, could never be brought to justice.⁵²

Section 133 of the Evidence Act lays down 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. While this Section lays down the above position of law, it has been long recognized that as rule of prudence and caution, the testimony of an accomplice should be corroborated in material particulars for this purpose means that the evidence which will have relevancy both to the crime as well as to the criminal. This rule of prudence and caution is derived from the principles set out in illustration (b) to Sec. 114 of the Evidence Act, that Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This presumption presupposes that the witness in question is an accomplice in the sense of one who has assisted the accused in the crime in some way so that he is 'tarred with the same brush' as the other accused persons, though not to the same extent. It is usual in such circumstances to rule out for the purpose of treatment as an accomplice a person who totally exculpates himself. The further question that arises is whether the same rule as to corroboration that is required in the case of an accomplice who turns approver and gives evidence for the prosecution should be insisted upon in the case of a person whose evidence discloses that he is not an accomplice at all. In such cases, apart from the provision in Sec. 133 and the presumption at all. In such cases, apart from the provision in Sec. 133 and the presumption in

⁵² AIR 1959 Andh. Pra. 387.

illustration (b) Sec 114 of the Evidence Act, it has been laid down that the principle of caution and the requirement of corroboration on material particulars should also be applied if the circumstantial evidence calls for it.⁵³

In *Vemireddi Satyanarayan v. State of Hyderabad*⁵⁴, the witness concerned took no part whatever in the commission of the offence or in any active or passive preparation for the same. He was not a participator in the crime. After securing his release from his temporary masters he went away with his father to his village. He did not divulge the secret of the murder to anyone except his father. The Supreme Court observed that, though he was not an accomplice, the Court would still want corroboration on material particulars as he was the only witness to the crime and as it would be unsafe to hang the accused on his sole testimony unless the Court was convinced that he was speaking the truth. It was held by the Supreme Court in *Ram Narain v. State of Rajasthan*⁵⁵ that-

- (a) The court is required to determine the nature and extent of corroboration of an approver's evidence necessary in a given case for sustaining the conviction of the accused.
- (b) The corroborating evidence, broadly stated, must connect, or tend to connect, the accused with the crime, charged. This is so because of the danger of the approver introducing some innocent person or persons into an otherwise true prosecution story.

⁵³ In re Mohali, 1970 Cr L.J. 288 at 291.

⁵⁴ AIR 1956 SC 379.

⁵⁵ AIR 1973 SC 1188.

(c) Such evidence, however, need not by itself be sufficient for sustaining the conviction of the accused, for, in that case, the evidence of the approver would be wholly unnecessary and mere surplusage.

(d) It may be borne in mind that the court should evaluate the evidence of an approver de hors the corroborating pieces of evidence, for, if his testimony is itself uninspiring and unacceptable justifying its rejection outright, it would be futile and wholly unnecessary to look for corroborating evidence.

It is only when the approver's evidence is considered otherwise acceptable that the court applies its mind to the rule that his testimony needs corroboration in material particulars connecting, or tending to connect, each one of the accused with the crime charged.

The best and most up-to-date exposition of the nature of corroboration is contained in a judgment of the Court of Criminal Appeal in *R.v. Baskerville*,⁵⁶ in which all the leading authorities were reviewed and the principles to be observed were enunciated in the clearest possible terms by Lord Reading, L.C.J., who delivered the judgment of the Court. It is difficult to imagine a more eminent combination of legal talent than represented by the five learned Judges who presided over the Court in that case. The general rules laid down by the Court in that case may be summarized as follows:-

⁵⁶ *R.v. Baskerville*, (1916) 2 KB 658.

- (i) The corroboration must be by some evidence other than that of an accomplice; and, therefore, one accomplice's evidence is not corroboration of the testimony of another accomplice.
- (ii) The corroborative evidence must be evidence which implicates the accused, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the accused committed it. In other words, the corroboration must be both as to the corpus delicti and as to the identity of the accused.
- (iii) It is not necessary that the story of the accomplice should be corroborated in every detail of the crime, since, if this were so, the evidence of his connection with the crime.
- (iv) The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime.
- (v) The rule of practice requiring corroboration of the evidence of the accomplice in some material particular implicating the accused has virtually become equivalent to a rule of law.

The decision of the Court of Criminal Appeal in England has been followed in several decisions in India,⁵⁷ and it is proposed to explain and illustrate the various rules laid down therein, with reference to Indian decisions.

⁵⁷ R. v. Baskerville, (1916) 2 KB 658.

In *King v. Baskerville* where the respondent had been convicted of having committed acts of gross indecency with two boys, who were in the nature of accomplices because they were freely consenting parties and there was no use of force. Lord Reading, the Lord Chief Justice of England, observed that: "there is no doubt that the uncorroborated evidence of an accomplice is admissible in law.....but it has long been a rule of practice at common law for the judge to warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices 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 it is within their legal province to convict upon such unconfirmed evidence..... This rule of practice has become virtually equivalent to a rule of law, and since the Court of Criminal Appeal came into operation this Court has held that, in the absence of such a warning by the judge, the conviction must be quashed.....if after the proper caution by the judge the jury nevertheless convict the prisoner, this court will not quash the conviction merely upon the ground that the accomplice's testimony was uncorroborated."

The aforesaid observations of Lord Reading in *King v. Baskerville*⁵⁸ were quoted with approval by the Supreme Court in *Rameshwar v. State of Rajasthan*.⁵⁹ Wherein it was observed that the law is exactly the same in India so far as accomplices are concerned. It was clarified that in cases tried by a judge without the aid of jury, it is necessary that the judge should

⁵⁸ (1961) 2 K.B. 658 at p. 663.

⁵⁹ AIR 1952 SC 54 at pp 56-57.

give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, and in jury cases must find place in the charge before a conviction without corroboration can be sustained. It was also clarified that there is no rule of practice that there must, in every case be corroboration before a conviction can be allowed to stand.

3. Appreciation of corroboration of Accomplice evidence:-

"The evidence of accomplice is trust worthy if corroborated" this is the guiding principle of evidence relating to testimony of an accomplice. But this golden rule does not spell the ultimate truth. Before relying whole reliance to the testimony of accomplice and other corroborating evidence, the nature and extent of corroboration must be taken into serious consideration.

(i) Rule as to corroborative Evidence:-

Certain rules are applicable to all evidence of a corroborative nature and are stated below:

(a) **It must be admissible:-** In the first place, the evidence in corroboration must not be inadmissible in law. In a prosecution under Sec.

377, I.P.C., the fact, that other boys like the complainant, visited the accused in his room, does not amount to corroborative evidence, nor would such fact be evidence (being evidence of similar facts inadmissible to prove the main fact).⁶⁰ Such evidence must be corroborative of the same offence as deposed to by the accomplice, and be not merely substantive evidence of several similar offences.

In a case of bringing different voters in which distinct charges on eight counts of bribery were made, it was held doubtful, if the evidence of different voters proving bribery in the distinct cases, was of the corroborative character required by law,⁶¹ because all the persons were not concerned in the same offence in which they came to give evidence, and, if the witness spoke the truth, each case was separate. But, in such a case, Martin, B., charged the jury: "Assume for purposes of the present discussion that this man was speaking the truth. Is there any law which prohibits a jury from believing a man who (it must be assumed for the sake of the argument) spoke the truth simply because he is not corroborated? I know of no rule of law myself, but there is a rule of practice which has become so hallowed as to be deserving of respect." The jury in this case returned a verdict of guilty on one count only, and, on a motion for a new trial, the Court held, that the directions to the jury were right, even supposing that the witnesses could be considered as accomplices of the defendant. The law on the subject was correctly laid down in *R. v. Stubbs*.⁶² It is not a rule of law that an accomplice must be corroborated in order to

⁶⁰ Bal Mukundo Singh v. R., (1935-61) Cr. L.J. 583.

⁶¹ R. v. Boyes, (1861) 1 B. & S. 311:

⁶² (1855) 25 L.J.M.C. 16.

render a conviction valid, but it is a rule of general and usual practice to advise Juries not to convict on the evidence of an accomplice alone. The application of the rule, however, is a matter for the discretion of the Judge by whom the case is tried. It is not necessary that there should be corroboration of the very fact; it is enough, if evidence be such as to confirm the Jury in the belief that the accomplice is speaking the truth.

It will be seen that, in the above case, the rule, as laid down in this section, was applied in support of the conviction.

(b) It must not be ambiguous- If the facts to be proved are of an ambiguous nature they cannot be corroborative evidence. Hence, such facts, as are not more consistent with the testimony than the reverse, are inadmissible.⁶³

Thus, letters found in the possession of an accomplice, which were so ambiguously worded as to admit of no unfavourable inference being drawn against an accused person without, in the first place, accepting as correct the interpretation suggested by the accomplice himself, were held as not affording any corroboration of the story told by the accomplice.⁶⁴

On an indictment against a prisoner for receiving stolen oats, a certain quantity of oats was found on the prisoner's premises, which the prosecutor believed to be his but he could not positively identify them; it was held, that there was no adequate confirmation of the thief's evidence.

⁶³ Phipson on Evidence, 11th Edu., PP. 677-681. R. v. Karoo, (1866) 6 W.R. Cr. 44, 45.

⁶⁴ R. v. Chatar, (1876) Rat. Unrep. 102.

The corroborative facts need not happen subsequent to the date of the fact to be corroborated.⁶⁵ Nor need they be discovered, or come to the knowledge of the police, after an information was supplied by the accomplice.

In *Ibrahim v. R.*,⁶⁶ the evidence of certain witnesses supported the approver as to the association of the accused both before and after the decoity. Such witnesses were first examined by the police and on getting information from these witnesses as to the movements of the party, the police examined the accused who was subsequently made an approver. It was argued that the evidence of the witnesses, was not real corroboration, because the approvers statement came after the statement of the witness but it was held, that it could not be said as a point of law that the evidence of the witnesses, who supported the evidence of the approver, was not corroborative evidence because the evidence was known to the police, before the approver was examined. Whether the approver was tutored to make the statement, which fitted in with the evidence of witnesses who had been previously examined, was a different question.

(c) **It must be independent-** The words evidence in corroboration of the approver' imply evidence other than that of the approver. A person does not corroborate himself. Hence the corroborative evidence must be some additional evidence extraneous to the accomplice's evidence.⁶⁷ So, it has been held, that the accomplice

⁶⁵ See III. (b) to S. 156, Indian Evidence Act: Phipson, 11th Edn., P. 677.

⁶⁶ (1925) 42 C.L. 496, 499 : 26 Cr. L.J. 1146 : SC I.C. 458: A.I.R. 1926 c. 374.

⁶⁷ AIR 1937 Page 209.

must be corroborated by independent testimony.⁶⁸ A statement made by an approver under Sec. 164 does not amount to the corroboration of his evidence. An accomplice cannot corroborate himself; tainted evidence does not lose its taint by repetition.⁶⁹ Corroboration of an accomplice's evidence must be found not in his own previous confession but elsewhere, because an approver like an accomplice does not corroborate himself. But the confession can be referred to in order to show that the story as related has been consistent throughout.⁷⁰

The intrinsic probability of the accomplice's statement is not by itself a corroboration of the truthfulness of an accomplice, though it may affect the degree of corroborative proof. So also a detailed and coherent statement of facts extending over a long period, which is difficult to remember and reproduce on suggestion, and which would be marked by discrepancies, if inspired, would not, by itself, afford a corroboration.⁷¹

(ii) Nature of Corroboration Evidence:-

The evidence in corroboration, which may be available under the Act, may be of those facts which are relevant substantive evidence against an accused person, having the effect of showing, or tending to show, the complicity of the accused with the crime. To corroborate such facts, other facts which render these facts or the facts in issue in the case

⁶⁸ R Vs Bakerville (1916) 2 K.B. 658.

⁶⁹ Bhuboni Sahu Vs The King, 76 I.A. 147.

⁷⁰ Ranjha Vs state, AIR 1951 H.P. 75.

⁷¹ Siar Nonia Vs R. (1913) 18 C.W.M. 530.

highly probable may be also proved.⁷² The section 11 deals with facts which ordinarily have nothing to do with the fact of a case and are not in themselves relevant, but they become relevant only by virtue of the fact that they are either inconsistent with any fact in issue or relevant fact or they make the existence of a fact in issue or a relevant fact either highly probable or improbable.⁷³

(iii) Section 156, Evidence Act:-

Further, Section 156 of the Act provides that some other facts, not directly relevant, may, in the discretion of the Court, be admitted in order to corroborate the testimony of a witness. The principle upon which this last-mentioned section is founded is, that there is often no better way of testing truthfulness of a witness than by ascertaining the accuracy of his statement as to the surrounding circumstances. When a witness, whom it is intended to corroborate, gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies: A, an accomplice gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. 'Independent' evidence of these facts may be given in order to corroborate his evidence as to the robbery itself. The section makes provision for eliciting

⁷² Section 11 of Evidence Act.

⁷³ Commissioner of I.T. Vs Kamala Town Trust (1996) 7 S.C.C. 349.

circumstances from the witness in order to prepare grounds for the corroboration of those circumstances and it provides for the admission of evidence, not to proving directly any relevant fact, but of testing the credibility of the witness.

It may be remarked in passing that, in examining an accomplice, he should be asked about the surrounding circumstances, and independent evidence of these facts should be given, so that the Court can see whether it can believe the accomplice's evidence.

(iv) Previous statements, Sect. 157:-

An earlier statement of the same accomplice, whether it be a confession or not, requires consideration in this connection. Section 157 of the Act provides thus: "In order to corroborate the testimony of a witness, his former statement relating to the same fact, at or about the time when the fact took place or before any authority legally competent to investigate the fact, may be proved."

The section accordingly provides that a previous statement is not altogether inadmissible in evidence for some corroborative purpose but whether it can be used as corroborative of the accomplice, in so far as he accuses another, is the question. Where the accused gave a girl poison to be administered to her husband, and the girl was tendered a pardon and made a prosecution witness and a statement of hers taken down by a private individual and a confession made by her before a Magistrate were put in, it was held by Rankin, C. J., Malik, J., and Guha, J., that the statement of the girl and her confession before the Magistrate were

admissible in evidence under Sec. 157, Evidence Act, and that it did not seem that these documents were to be regarded from the standpoint of confession of a co-accused, and their admissibility in law is admissibility as evidence which confirms and tends to confirm the story which the girl gave in the witness-box.⁷⁴

It will be observed that Sec. 157 does not lay down that the earlier statement of the accomplice would be corroboration of the accomplice in material particulars.

(v) Complicity of accused:-

In *R. v. Bepin Biswas and others*⁷⁵ the High Court (Prinsep and Macpherson, JJ.) observed: "The mere repetition of the same statement of facts without contradiction or material discrepancy is, no doubt, recognised by Sec. 157, Evidence Act, as some corroboration of the truthfulness of that statement, but the Judge has lost sight of the fact that from the position occupied by an approver witness, his evidence is necessarily regarded with very great suspicion as being tainted, and that although he may, on the main facts connected with the commission of the offence, be truthful and reliable, it is when he comes to implicate any particular person that his evidence should be accepted with greatest caution. Nothing is easier for a man than to narrate events with accuracy, and yet more so, when coming to describe the acts of a particular person, to change his personality so as to exculpate a guilty friend, and to implicate an innocent person or any enemy.

⁷⁴ *Amode Ali Sikdar Vs R.* (1931) 35 C.W.N. 573.

⁷⁵ I.L.R. (1884) 10 Cal. 970, 973.

"It is for this reason, that the rule stated in the case of *R. v. Nawab Jan*,⁷⁶ has always been accepted..... It is not necessary for us to consider whether the rule should be extended as far as to exclude a statement made before arrest; but we have no doubt at all that the exact correspondence in details of several statements made by an approver in the course of a trial, is not corroborative evidence such as we ordinarily require to make it safe to convict any particular prisoner."

In *R. v. Bykunt Nath Banerjee*,⁷⁷ Phear, J., said : "Obviously the bare confirmation of the statement made by the approvers that the endorsing took place after Kali Kant's death is no confirmation of their statement."

In *R. v. Malapa*,⁷⁸ Nanabhai Haridas, J., in delivering the judgment said: "The Sessions Judge has made use of Murgia's statements, made on different occasions to his parents and to police officers shortly after the murder. But such corroboration, we think, hardly suffices. It can scarcely be said to answer the purpose for which Juries are advised by Judges to require the evidence of an accomplice to be confirmed. From the position in which he stands it is considered unsafe to act upon his evidence alone. Hence the rule requiring confirmation of it as to the prisoners by some independent reliable evidence. But his statement, whether made at the trial or before the Court, is still only the statement of an accomplice, and does not at all improve in value by repetition."

⁷⁶ (1967) 8 W.R. Cr. 19 (26).

⁷⁷ (1868) 10 W.R. Cr. 17, 18.

⁷⁸ 11 Bom. H.C.R. 196.

"The force of any corroboration by means of previous consistent statements must evidently depend upon the truth of the proposition that he who is consistent deserves to be believed. If that proposition that he who is consistent deserves to be believed. If that proposition be not universally true, what becomes of the virtue of previous consistent statements? One may persistently adhere to falsehood once uttered if there is a motive for it; and should the value of such a corroboration ever come to be rated higher than it now is, nothing would be easier than for designing and unscrupulous persons to procure the conviction of any innocent man, who might be obnoxious to them, by first committing offences and afterwards making statements to different people and at different times and places, implicating those innocent men."

In *R. v. Nga Myo*,⁷⁹ Roberts, C.J., Observed: "If a person A is giving evidence as to the confession of a crime and declares that he made similar statements about the time of its commission, he does not thereby corroborate himself, nor strengthen his own testimony. But if in support of A's evidence, it is proved from another source that A did make a statement of a kind similar to his evidence, about that time, then the fact thus proved may be taken as corroboration of A's statement in evidence that he did so, and as showing the consistency of his testimony and conduct. For example, the contents of a first information report are not evidence of the truth of the matters stated therein; but it may be proved in evidence that A made it and

⁷⁹ (1938) 39 Cr. L.J. 581 : AIR 1938 Rang. 177 (F.B.)

the contents of the report may be proved in order to corroborate A's testimony when he is later called as a witness."⁸⁰

In the above case, Roberts, C.J., pointed out that such earlier statements of the accomplice are not, strictly speaking, corroborative of the truth of the matter stated by the accomplice and if proved by other evidence is corroborative of the fact that such a statement was made and as showing the consistency of the accomplice testimony and conduct.

Confessions made by approvers are not substantive evidence, but may be used only for the purpose of contradicting or corroborating their deposition in Court.⁸¹ It would thus appear that though previous statements are admissible for certain purposes, they do not form such corroborative evidence as is required in the case which must be independent evidence implicating the accused.

(vi) Statement of another accomplice:-

When instead of the statement of the same accomplice, a statement of another accomplice is put forward either in the shape of evidence of another approver or a confession of a co-accused person on joint trial, the question arises, if such evidence is legal or sufficient for corroboration purposes. Such evidence comes no doubt from a fresh source but is not independent in the sense that it can stand by itself.

⁸⁰ Ibid.

⁸¹ (1937) 38 Cr.L. J. 852.

The practice of requiring the evidence of an accomplice to be confirmed applies equally when two or more accomplices are produced against a prisoner. In a case, where two accomplices spoke distinctly as to the prisoner, Littledale, J., told the Jury that if their statements were the only evidence, he could not advise them to convict the prisoner, adding that it was not usual to convict on the evidence of one accomplice without confirmation and that, in his opinion, it made no difference whether there were more accomplices than one.⁸²

In the case of *R. v. Dwarka*,⁸³ it was distinctly laid down that "the evidence of two more accomplices requires confirmation equally with the testimony of one."

In *R. v. Ram Saran*,⁸⁴ Straight, J., observed: "There must be some corroboration independent of the accomplice, or, as in the present case, of the accomplice and the co-confessing prisoner, to show that the party accused was actually engaged directly in the commission of the crime charged against him. I may add that it is of no value and makes no difference if there are two accomplices. A second accomplice does not improve the position of the first, nor does the fact that there are two, make it necessary that both should be corroborated."

In *R. v. Chand*,⁸⁵ four accused persons, B,C,M, and T being committed for trial on a charge of murder, B was made an approver, and M and T pleaded guilty; and the trial thereupon proceeded against C alone: it

⁸² R. Vs. Noakes, SC. and P- 326.

⁸³ (1866) 5 W.R. Cr. 18.

⁸⁴ 1885 A.W.H. 311, 313.

⁸⁵ Unrep. Bom. 400.

was held by Nanabhai Haridas and Birdwood, JJ., that the statements of M and T could not be used against C to corroborate the evidence of the accomplice B; and that as M and T pleaded guilty, and as the trial proceeded against C alone, he was not being tried together with them and Sec. 30 of the Evidence Act had no application to their statements.

In the trial of R, S and M, upon a charge for murder, the evidence for the prosecution consisted of (i) the confession of P, (ii) the evidence of an accomplice, (iii) the evidence of witnesses who deposed to the discovery in R's house of property belonging to the deceased, and (iv) the evidence of witnesses who deposed that, on the day when the deceased was last seen alive, all the prisoners were seen together near the place where the body was afterwards found. It was held that there was no sufficient corroboration of the statements of the accomplice or of the co-confessing prisoner.⁸⁶

So, it has been held, that the confession of a co-accused person corroborated by the confession of other accused persons is insufficient for conviction.⁸⁷

In *Bhuboni Sahu v. The King*,⁸⁸ their Lordships of the Privy Council held, that "although a conviction founded on the evidence of an approver supported only by the confession of a co-accused may be justified in law under sec. 133, Evidence Act, and whilst appreciating that the coincidence of a number of confessions of co-accused all implicating the particular

⁸⁶ R. vs. Ram Saran, 1885 A.W.N. 311.

⁸⁷ (1905) 10 C.W.N. 16.

⁸⁸ A.I.R. 1949 P.C. 257.

accused given independently and without an opportunity of previous concert, might be entitled to great weight, we would nevertheless observe that Courts should be slow to depart from the rule of prudence, based on long experience which requires some independent evidence implicating the particular accused."⁸⁹

The evidence of one accomplice, who is himself unworthy of credit, cannot be corroborated or confirmed or strengthened by the evidence of another accomplice who is equally unworthy of credit. In the case of the evidence of several accomplices, the Court must take the evidence of each of the accomplices separately and decide whether or not that evidence is worthy of credence and ought to be acted upon without further corroboration. If it is satisfied that any one of the accomplices is so deserving of credence, there is an end of the matter. If, on the other hand, the evidence of each of the accomplices is unworthy of credence, the Court before convicting any of the accused persons, must be satisfied that as against that accused person, there is testimony, independent of that of the accomplices, which connects or tends to connect him with the crime.

The evidence of one accomplice is not available as corroboration of another.⁹⁰ The Lahore High Court stated *in Sharif v. Emperor*,⁹¹ that it has been held, time after time, that the evidence of one approver cannot be corroborated by that of another approver. There must be independent corroboration.

⁸⁹ Kashmira Singh Vs state of M.P. 1952 S.C.R. 526.

⁹⁰ 1949 Cal. 594.

⁹¹ 1944 Lah. 472.

(vii) Police statement of the approver:-

In Nilkanta's case, it was held by all the Judges, following the Calcutta decision in *Fanindra Nath Banerjee v. R.*,⁹² that statements of the approver made before the police during investigation could be used to corroborate him; but, subsequent to the above decision, the law has been changed and an use by the prosecution of any such statements, oral or reduced to writing, is not permitted by the present Sec. 162, Cr. P.C.⁹³

In Nilkanta's case, it was held by White and Ayling, JJ., that the confession of the approver before the police could be used to show that his evidence at the trial was true, but Sankaran Nair, J., held that the confession is not the less a confession because it is sought to be used against other persons and the confessions made to the police are inadmissible in evidence against the other accused under Sec. 25. The question coming before a Special Bench, it was held by Benson, Wallis and Sundara Ayyar, JJ., that a statement of a confessional nature made by a witness to a police officer was inadmissible for all purposes.

When the statements are admissible confessions, how far they can be used as evidence against a person on joint trial has been discussed before. Regarded as a piece of evidence to corroborate the approver, it will be seen that such statements do not come from an independent source. Besides, the corroboration which is afforded by such statements is corroboration only of the narrative of the accomplice.

⁹² I.L.R. 36 Cal. 281.

⁹³ *Azimuddi vs. R.* (1926) 44 Cr. L.J. 253.

(viii) Retracted confession of a co-accused:-

Where the confession of a co-accused is retracted, such a confession of a co-accused is not the testimony of an accomplice within the meaning of Sec. 133. The law, with regard to a retracted confession, or rather its evidentiary value when it is sought to be used as against a co-accused, is well settled so far as the Calcutta High Court is concerned. It has been laid down in a long series of cases of which it is necessary only to refer to *Yasin v.R.*,⁹⁴ and *R.V Lalit Mohan Chuckerbutty*,⁹⁵ that a retracted confession should tactically carry no weight as against the person other than the maker.⁹⁶ As corroborative of the testimony of an accomplice witness, it cannot also be used, as it does not come from an independent reliable source and is practically of no weight.

In *Baboo Singh v.R*⁹⁷. the evidence against Baboo Singh was the retracted confession of Kallan Khan and that confession alone primarily and directly connected Babno Singh with the murder of the deceased. The Sessions Judge finding the retracted confession corroborated, treated it as substantive evidence against Baboo Singh. It was held by the Oudh Chief Court, that little or no reliance could be placed on such a retracted confession, so far as the co-accused is concerned, and further the Court should not legitimately apply rules of prudence (i.e. the accomplice should be corroborated in material particulars) which relate to the sworn testimony of an accomplice or approver to the retracted confession of a

⁹⁴ I. L.R. (1901) 28 Cal. 689.

⁹⁵ I.L.R. (1911) 38 Cal. 559.

⁹⁶ *Movzes Vs R.* (1924) 40 Cr.L.J. 551

⁹⁷ (1935) 37 Cr. L.J. 163.

confessing prisoner, and by means of the application of these rules impliedly make the retracted confession substantive evidence against the persons accused along with the confessing prisoner.

"In *Lalan Mallik v.R.*⁹⁸ Calcutta High Court held that in all cases depending on the evidence of an informer, the degree of support, that the evidence required must depend on the amount of the credit in each particular case to be attached to the informer, and that the confession of the accused was ample evidence to corroborate the approver in that case there was the evidence of approver and it was corroborated by the retracted confession of the accused. The case of an accomplice is more or less on the same level as that of an approver, and this case, therefore, supports the view that a retracted confession can be used as corroboration of the statement of an accomplice so far as the maker of the retracted confession is concerned.⁹⁹ "

(ix) - Retracted deposition of a witness :-

A confession of a co-accused, which is retracted, may indeed not be used as corroborative evidence.¹⁰⁰ In the above-noted case, as regards the accused's participation in the crime, the best corroboration was found in his judicial confession. He was found working in a jute mill, taken into custody and produced before a Magistrate for recording his confession. The confession was retracted on the grounds that it was not voluntarily made and that it was not true. It was held, that when the co-accused makes

⁹⁸ 15 IC 987.

⁹⁹ Bhairan Lal Vs the State AIR 1953 Raj. 131.

¹⁰⁰ Paramhansa Jadab vs State AIR 1966 Orissa 144.

studious attempts in his confession to show that he was an unwilling accomplice in the commission of the crime, his confession can not be used against the other accused, but it can be used to a limited extent against himself, as corroborating the evidence of a witness, when the evidence of that witness is the main evidence against him, and that portion of the confession, which incriminates the maker, may be used as corroborative of the evidence of such witness.¹⁰¹ In this connection it may be mentioned that it would be highly unsafe to use the retracted deposition of a witness admitted under Sec. 288, Cr. P.C., (no corresponding section in 1973 Code) as corroboration of a retracted confession.¹⁰²

(x) Several Statement made without concert:-

Regarding the above general rule that an accomplice cannot be corroborated by the testimony of another accomplice, Sir Barnes Peacock, C. J., in *R. v. Elahee Buksh*.¹⁰³ after quoting the dictum of *R. v. Nokaes*,¹⁰⁴ said: "This, as a general rule, is correct for otherwise two companions in guilt might get off by confessing and falsely accusing two innocent persons. But if two or three persons should be apprehended at different places at long distances from each other, and should each confess and give a similar account as to the persons associated with them in a particular decoity, the statement of each, if made under such circumstances as not to raise a presumption of collusion might be proved in corroboration of his

¹⁰¹ Ibid.

¹⁰² *R. vs Jadub Das* ILR (1900) 27 Cal. 295.

¹⁰³ (1866) 5 W.R. Cr. 80.

¹⁰⁴ (1832) 5C and P. 326

evidence; such statement being admissible as corroborative evidence under Act II of 1855, Sec. 31 (now Sec. 157 of the Act). The evidence of the several accomplices, so corroborated, might be sufficient to satisfy a Jury, although the evidence of one of them alone could not have been safely acted upon. These are matters to which the attention of a Jury ought, under all circumstances, to be specially directed with proper remarks from the presiding Judge, according to the rule laid down by Mr. Justice Butler in the case already cited."

In the second illustration appended to the exception to illustration (b) of Sec. 114 it is laid down: "A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable." Such facts should be considered by the Court in seeing whether the maxim of corroboration does or does not apply to the case.

This illustration, as observed before, is in accordance with the language of Peacock, J., in the case of *R. v. Elahee Buksh*.¹⁰⁵ With respect to this illustration, Phear, J., in the case of *R. v. Sadhu Mundul*,¹⁰⁶ observed: "It is true that the instance of corroboration which is appended to illustration (b) of Sec. 114, and which has been already referred to, is corroboration to be found in accounts of an occurrence given by accomplices; but it is noticeable that the Legislature expressly makes it a

¹⁰⁵ (1866) B.L.R. (Sup.) Vol. p. 459.

¹⁰⁶ (1874) 21 W.R. Cr. 69.

condition to the validity of this corroboration that these accomplices should have been captured on the spot and kept apart from each other, and moreover, there is not the slightest indication that the Legislature intended in this passage by the term 'accounts given by the accomplices' anything other than accounts given in due course of examination as witness. In view therefore of the stringent condition, which the Legislature has here prescribed as essential to the corroborative force of the accomplice's account, we think that the mere confessions of prisoners tried simultaneously with the accused for the same offence, which are in a very qualified manner made operative as evidence under Sec. 30, do not come within the scope of this legislative declaration, that, under the special circumstances mentioned, the account given by one accomplice may be treated as corroboration of the account given by another."

It is submitted that it is not necessary that the accounts should be given as witness, provided the statements made by them are proved according to law. Neither is it a necessary condition that the several accomplices should be captured on the spot and kept apart. These circumstances are only illustrative of the fact that in certain circumstances the account of different accomplices may be accepted by the Court as corroboration.

The result is, that although the evidence of one accomplice is not sufficient corroboration of that of another so as to justify a conviction, yet, there may be circumstances, such as, where previous concert by the informer is highly improbable, in which the agreement in their stories

cannot have been arranged between them beforehand, which must be taken into account.¹⁰⁷

In *Hakam v. R.*,¹⁰⁸ it has been held, that the testimony of an approver is of little value as a piece of corroborative evidence. The testimony of an approver can be used for corroboration, if the taint is removed to such an extent that the Court is prepared to believe it in the same way as the testimony of an ordinary witness.

Ordinarily, the testimony of one accomplice would not be sufficient to corroborate that of another. But an exception arises. As the Supreme Court has held, if several accomplices, simultaneously and without previous concert, give a consistent account of the crime implicating the accused, the court may accept the several statements as corroborating each other.¹⁰⁹ But it must be established that the several statements of the accomplices were given independently and without any previous concert.¹¹⁰

(xi) Proof of absence of concert:-

It has been pointed out by Richards, C.J., that where several accomplices implicate the same accused person without any previous collusion the assurance, in such a case, is derived, not because each of the accomplices corroborates the other, but because another circumstances, viz., the mention of the same accused without any collusion comes into existence in such a case and that really corroborates the accomplice or

¹⁰⁷ R.vs Mingappa. (1905) 2 Bom. L.R. 610.

¹⁰⁸ AIR. 1929 Lah. 850.

¹⁰⁹ Mohd. Hussain Umar Vs K.S. Dalip Singh (1970) I.S.C.R. 130.

¹¹⁰ Ibid.

accomplices. Says the learned Chief Justice: "There is nothing in the Evidence Act to suggest that the word 'corroboration' in British India has a specialised and different meaning from that which it bears in other parts of the British Empire. Corroboration means independent testimony. When in the case of an accomplice it is desirable because the accomplice's evidence comes from a tainted source, the nature of corroboration required is not mere evidence of a tainted kind but fresh evidence of an untainted kind.....Since Sec. 133, Evidence Act, lays down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, it follows that if there be three accomplices A, B and C, the Court may reject the evidence of A and convict upon the uncorroborated evidence of B and C or reject A's and B's evidence and proceed to convict upon C's evidence alone. But it is a misuse of words to say that the evidence of any one of these witnesses can 'corroborate' that of others: there is no corroboration between accomplices, if the source of their evidence is tainted, and a Court which convicts, in such a case, is convicting upon uncorroborated testimony. It is important to realise what is and is not corroboration. Once the evidence of a witness is open to suspicion and by a rule of prudence corroboration is required... it is not corroboration at all, unless it proceeds from an untainted source, or from a source, which though tainted corroborates the testimony of an accomplice on matters implicating the accused with a criminal offence in such circumstances that the Court is satisfied that there can have been no collusion between the tainted witness, and that therefore the objection that

the evidence is tainted has lost its force. It must be observed that there is a danger as to this collusion. The question of probability of their collusion, even in a case such as is mentioned in the second illustration given to Sec. 114, must not altogether be left out of account. An approver displays characteristics of the meanest type and when dishonour stands confessed as it does by the evidence of an accomplice, though in law a conviction may follow on his uncorroborated testimony, the utmost care should be taken by the Court or Jury or by the appellate tribunal to see that the special circumstances of the case justify reliance upon this rule of law to the exclusion of the rule of practice dictated by reasonable caution and endorsed by the wisdom of the Judges over a considerable period of years in a large number of widely differing cases."¹¹¹

(xii) Corroboration must be both as to the corpus delicti and as to the identity of the prisoner:-

It is now well settled that the minimum amount of corroboration required to make it safe to act on the testimony of an accomplice is, that his evidence must be corroborated not only as to the corpus delicti, but also as to the identity of the accused person. The corroborative evidence must show or tend to show, that the story of the accomplice that the accused committed the crime is true, in other words, it must be such evidence as implicates the accused, that is, evidence which confirms not only the evidence that the crime has been committed but also the evidence that the accused committed it.¹¹² Corroboration, either as to the corpus delicti

¹¹¹ Nga Aung Pe Vs R., (1937) 38 Cr. L.J. 785.

¹¹² R.V.S Baskerville (1916) 2 KB 653.

alone, or as to the identity of the prisoner alone, is not sufficient. If the story of the accomplice is not corroborated as to the corpus delict, the question whether the accused committed the crime, or some one else committed it, does not arise for consideration, on the other hand, if his story is corroborated as to the corpus delicti, the court needs further to be satisfied by corroborated evidence that the accused and not some one else committed the offence. The fact that an approver has been corroborated as to the commission of the crime merely- shows that he himself took part in the commission of the offence.¹¹³ Lord Abinger says, "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".¹¹⁴ The accomplice may know every circumstance of the crime, and, while relating all the other every facts truly, may, in order to save a friend or gratify an animosity name some person who was innocent of the crime, as one of the criminals.¹¹⁵ It is, therefore, upon the identity of the accused person as having taken part in the commission of the crime that the corroboration of the approver's story requires most careful investigation.¹¹⁶ The corroborative evidence must show not only that the approver had an accomplice, but that it was the accused and not any one else.¹¹⁷ Where there are more accused persons than one, there must be corroborative evidence against each individual accused, and those against whom there is

¹¹³ Jagwa Dhanuk V.E. 5 P 63.

¹¹⁴ R.V. Farler, 8 C & P 106, quoted by Lord Reading, C.J. in, R.V.Baskerville, (1916).

¹¹⁵ Q.E. V. Krishnabhat, 10 B 319

¹¹⁶ Shiba Das Daw, V.E. 1934. C 114.

¹¹⁷ Amarnath v. E., 1931 L 406.

no such evidence are entitled to an acquittal.¹¹⁸ The accomplice must be corroborated not only as to one but as to all of the persons affected by the evidence and corroboration of his evidence as to one prisoner does not entitle his evidence against another to be accepted without corroboration. A circumstance cannot furnish corroboration of the story of an accomplice against an individual accused, if it has either no criminal significance apart from details of the accomplice's story which are not themselves proved by independent evidence, or if the circumstance is susceptible of an innocent explanation which the Court accepts as probable.¹¹⁹

As against another accused the corpus delicti (the body, substance or foundation of the offence), is as much to be established as the accused's complicity with the crime. West and Nanabhai Haridas, JJ., on the authority of Lord Ellenborough's ruling in the trial of Colonel Despard held that not only as to persons spoken of by an accomplice must there be corroborative evidence, but, which is more important still as to the corpus delicti there must be some prima facie evidence pointing the same way to make the evidence of an accomplice satisfactory. As has been recognised in many case, the man who charges another with the commission of a crime, in which he is implicated, requires the corroboration as to the particular person, but still more as to the existence itself of any crime, or of the particular crime from the penalty of which he is made free-on the understanding that his testimony will be valuable for the prosecution¹²⁰.

¹¹⁸ Nga Po Aung v. E., 1937 R 264; 170 IC 645; Mangal Singh v. E. 1934 L 346; Arjan v. Crown, 34 PLR 2.

¹¹⁹ Shankarshet Ramshet Uravane v. E., 58 B 40 : 1933 B 482.

¹²⁰ Rvs Budha Nanka (1876) I.L.R. 1 Bob. 475.

(xiii) Accomplices do not corroborate each other:-

Before the testimony of an approver can be acted on, it must be corroborated in material particulars. The nature and the extent of this corroboration is well settled; there must be corroboration not only as to the crime, but also as to identity of each one of the accused. This is no technical rule, but one founded on long judicial experience.

The corroboration of the evidence of an approver should arise from other evidence relative to facts, which implicate the prisoner in the same way as the story of the approver does¹²¹. "Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect the accused with the crime". The corroboration "should be corroboration derived from evidence which is independent of accomplices and not vitiated by the accomplice-character of the witness, and further, should be such as to support that portion of the accomplice's testimony which makes out that the prisoner was present at the time when the crime was committed, and participated in the acts of commission¹²². Thus, statement of a raped girl to her mother has been held to be independent corroboration¹²³. Corroboration must be by some evidence other than that of an accomplice.

The danger of using the testimony of one accomplice to corroborate another has repeatedly been pointed out. So far as the law is concerned, a conviction can be based on the uncorroborated testimony of an accomplice

¹²¹ Rv. Bvkant. 10WR Cr. 17

¹²² Rv. Mohes Biswas, 1873, 19 WR Cr. 16.

¹²³ Rameshwar v S. A1952 SC 54

provided the Judge has the rule of caution, which experience dictates, in mind and gives reasons why he thinks it would be safe in a given case to disregard it. It follows that the testimony of an accomplice can in law be used to corroborate another though it ought not to be so used save in exceptional circumstances and for reasons disclosed¹²⁴. As the privy Council observed in *Bhuboni Sahu v. The King*¹²⁵. "The tendency to include the innocent with the guilty is peculiarly prevalent in India, as Judge have noted on innumerable occasions, and it is very difficult for the Court to guard against the danger.....The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates such accused."

Evidence of one accomplice cannot be used to corroborate the evidence of the other accomplices¹²⁶ and the position of law is thus that the combined effect of Sect. 3, 30, 114 illus (b) and 133 is:-

- (1) That an accused person can legally be convicted upon the uncorroborated evidence of an approver;
- (2) That whether accused person should or should not be convicted upon such evidence is left to the prudence and good sense of the tribunal after considering all the circumstances of the case;
- (3) That prima facie the evidence of an approver, being tainted evidence, is unworthy of credit unless it is corroborated in some

¹²⁴ *Kashmira Singh v. State of M.P.* AIR 1952 SC 159 at p.p. 160-61.

¹²⁵ 76 Ind. App. 147 at p. 157.

¹²⁶ *Mohd. Husain, Umar Kochra v. K.S. Dalipsinghji*, AIR 1970 SC 45 at p 55.

material particulars tending to show that the accused committed the offence with which he is charged;

- (4) That it is for the court to determine in the particular circumstances of each case whether the "matter" before it tending to corroborate the evidence of the approver (which may or may not be evidence strictly so called and as defined in the Evidence Act) is worthy of credence and is sufficiently reliable to be treated as evidence against the accused, and acted upon:
- (5) That the evidence of an approver may be corroborated by the evidence of another approver or by the confession of a person who is being tried jointly with the accused for the same offence implicating both himself and the accused;
- (6) That it is duty of the court to scrutinize with care such corroboration as that mentioned in (5) but that whether it is to be treated as evidence against accused or not is to be determined by the court, having regard to the circumstances of the case¹²⁷.

All the above propositions except No. 5 relating to the corroboration of one accomplice's evidence by the testimony of another accomplice have been firmly established by a long series of decisions of all the High Court, old and later.

It is submitted that the traditional and safe rule of independent corroboration state in *R v Baskerville*, will still prevail in the actual

¹²⁷ Aung Hla v R, 404 FB. Nga v. R, A 1933 R 116; Mg Tha v R, A1935 R 491; Nga Nyein v R, 11 R 4: Nga Tun v R, A1937 R 116

decision of cases and rank as the soundest opinion. To hold that one accomplice may corroborate another is to deviate altogether from the salutary rule of independent corroboration which has for all practical purposes become as good as a rule of law. Corroboration of his evidence from its nature is most unreliable. So the corroboration of one tainted evidence by another tainted evidence can in no sense be called independent corroboration. Corroboration is defined in Wharton's Law Lexicon¹²⁸, "Independent corroboration" in its true sense must necessarily mean reliable evidence of another kind, i.e. from a fresh source.

It is now firmly established that accomplices do not corroborate each other¹²⁹ and the Privy Council has reaffirmed it in *R v Bhuboni*, and Supreme Court in *Hussain v Dalipsinghji*¹³⁰, while agreeing with the rule in *Bhuboni's* case (ante) it has been observed that "the testimony of an accomplice can in law be used to corroborate another though it ought not to be used save in exceptional circumstances and for reasons disclosed¹³¹. The question in this case was as to corroboration by the confession of a co-accused (who no doubt is also an accomplice), or more properly, the use of confession of an accused against a co-accused. The emphasis on "exceptional circumstances" can only mean that these are special cases where the accomplice evidence is believed to be true and s 113 alone is applied without raising the presumption of untrustworthiness in s 114, illus

(b). In such cases corroboration by accomplice evidence is hardly needed

¹²⁸ 13th Ed as 'evidence in support of principal evidence'

¹²⁹ *Mahadeo v R*, Sup; *Nawal Kishore v R*, 22 P 27: A1943 P 146; *Mallu v R*, A1933 N 352; *Sharif v R*, A1944 L 472; *Cohen v R*, A1949 C 595; *Kunjebeheri v S*, A1951 P 8; *In re Thiagaraja* A1946 M 271.

¹³⁰ A. 1970 SC 45.

¹³¹ Per Bose J, in *Kashmira v State*, A1952 SC 159

to be brought into requisition. In any case it is simply doubling the quantity of the same evidence.

Not only is necessary that evidence should be corroborated in material particulars but the corroboration should extend to the identity of the accused person. The accomplice must be corroborated not only as to one, but as to all, of the persons affected by the evidence, and because he may be corroborated in his evidence as to one prisoner, it does not justify his evidence against being accepted without corroboration¹³². His testimony should be confirmed not only as to the circumstances of the case but also to the identity of all the prisoners, and any prisoner as to whom his testimony is not supported should be acquitted¹³³. The moment there is corroborative evidence connecting or tending to connect an accused with the crime, such corroborative evidence relates to the identity of the accused in connection with that crime. It is this corroborative evidence which determines the mind of the court or jury.

In respect of Illustration (b) to Section 114 of the Evidence Act. the said section states that the Court shall also have regard to the following facts in considering whether the maxim laid down in the said Illustration does or does not apply in a particular case before it: "A crime is committed by several persons. A, B and C, three of the criminals are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable."

¹³² Rv Ram Saran 8 A 306; Hachuni V R, 34 CWB 390; Rv Govinda A 1921 N 39

¹³³ Rv Imam, 3 BHC 57 58; Kaltu v R A 1927 L 10

Explaining the provision in. 114 of the Evidence Act, it was held by the Supreme Court that if several accomplices simultaneously and without previous concert give a consistent account of the crime implicating the accused the Court may accept the several statements as corroborating each other. But it must be established that several statements of accomplice were given independently and without any previous concert. It was held that in the instant case, however, the statements of different accomplices cannot be regarded as having been made independently and without any previous concert and do not amount to sufficient corroboration of the accomplices meeting together and conspiring to implicate a particular person¹³⁴.

(xiv) Corroboration by circumstantial evidence:-

Corroborative evidence may be either direct or circumstantial; but circumstantial evidence consistent with the innocence of the accused has been held insufficient to corroborate an accomplice's testimony¹³⁵. Circumstantial corroborative evidence has been required by some courts to be such as to exclude every reasonable hypothesis of defendant's innocence, when considered in connection with the accomplice's testimony but other courts do not make such a rigid requirement. The general rule of the corroboration of the accomplice by circumstantial evidence is in order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt." Hence, circumstances of

¹³⁴ Mohd Husain Umar Kochra vs K.S. Dalipsingh AIR 1970 SC 45 at p. 56.

¹³⁵ Smith vs state 5Ga. APP. 833

suspicion while strongly indicating the guilt of the accused do not exclude the possibility to his innocence of the charges.

Admissibility of prior consistent declarations of an accomplice in corroboration of his testimony has been both denied and affirmed. Corroboration by independent evidence is not dispensed with where several accomplices testify against the accused. The accomplices are not deemed to corroborate each other¹³⁶, and the court should so charge when one witness is an accomplice and another may be found to have been¹³⁷.

(xv). Conviction on Accomplice Evidence without corroboration:-

Conviction does not become illegal because it is based on uncorroborated testimony of an accomplice. However s 133 read with with s 114 illus (b) requires that the court should seek as a rule of prudence for corroboration. The court should first evaluate the approver's evidence and if the same is uninspiring and unacceptable corroboration would be futile¹³⁸. These and other similar case state the well-known principle that accomplice evidence is legal evidence and court may act on it if believed. But the equally well-known rule of practice demands corroboration in material particular before it is acted upon save in exceptional cases.

The degree of suspicion which will attach to accomplice evidence must, however, vary according to the nature and extent of the complicity; sometimes the accomplice is "not a willing participant in the offence but a victim of it." When the accomplices act under a form of pressure which it

¹³⁶ United states vs Hinz 35 Fed. 272.

¹³⁷ Simms vs. state, 98 Tax. Cr. 352.

¹³⁸ Ramnarain vs.S.A. 1973 SC 1188.

would require some firmness to resist, reliance may be placed on their uncorroborated testimony¹³⁹. Although it is unsafe to convict on accomplice evidence without corroboration it must be remembered in applying the maxim that all persons technically coming within accomplices cannot be treated as on precisely the same footing¹⁴⁰.

There is no positive legal bar to taking the evidence of an accomplice supported only by the confession of a co-accused or an approver's evidence as a basis for conviction, but it has long been a rule of practice and prudence not to act upon it without independent and substantial corroboration¹⁴¹.

(xvi). Accomplice reselling from his statement before the Committing Magistrate:-

Where an accomplice has made one statement before the Committing Magistrate and another statement before the Sessions Judge, the Session Judge is competent to admit in evidence the former statement and to treat it as evidence. It is open to him to hold that the statement before the Committing Magistrate is a correct one and that it should be relied upon in spite of the other statement made by the accomplice before him¹⁴². The statement of a co-accused, may be admissible in certain circumstances though not examined, but not that of an accomplice who is available to be examined¹⁴³.

¹³⁹ Srinivas Mall v. R A 1947 PC 135.

¹⁴⁰ R v. Malhar, 26B, 193; Md Usaf v R.v. 1929 N 215.

¹⁴¹ Bhuboni v R A1949 PC 257; Mg Lav v. R. 77 IC 429

¹⁴² Bholonath v E. 1939 A 567; see Bhuboni Sahu v. The King, 1949 PC 257; 76 IA 147; Cr LJ 872.

¹⁴³ Hadu v. State, AIR 1951 Orissa 53.

In considering whether the evidence of the approver given before the Committing Magistrate is to be preferred to that which he gave in the Session Court, the Court is entitled to have regard to the fact that very soon after the occurrence he had made a statement in the same sense as the evidence which he gave before the Committing Magistrate¹⁴⁴.

(xvii) Fact Held Not Corroborative :-

The following facts have been held as not corroborative by the courts. For example, the mere fact that accused were seen with approver a few days before the decoity is not material corroboration¹⁴⁵. Statements of a witness that he saw the accused with the deceased a short time before the occurrence is not material corroboration¹⁴⁶.

Evidence of finding of articles of an ordinary character and their identification is not sufficient¹⁴⁷.

Mere fact of production of a spear and dang from field by approver and a statement that the spear was used, or the fact that it was stained with blood, is not corroboration¹⁴⁸. Finding of deceased's cloth on the statement of approver, or the finding of a common instrument in accused's house with nothing to connect him with them is not corroboration¹⁴⁹. Evidence relating to the recovery of alleged stolen articles in a search of accused's

¹⁴⁴ Khushalia vs E. 40 PLR 61.

¹⁴⁵ Hazara v R 82 IC 707; Mauladad v R 86 IC 69.

¹⁴⁶ R v. Ram Karan 88 IC 453: A1925, L 600.

¹⁴⁷ Nathu v R, A1929 L 680.

¹⁴⁸ Chaman v R, A1927 L 78.

¹⁴⁹ Bhuboni v R, A1949 PC 257.

house when he was given no opportunity of checking the results of the search and which is itself suspicious cannot be treated as corroboration¹⁵⁰.

Merely because the approver tells a probable story¹⁵¹ or the mere fact that there was animosity against the deceased providing motive for the crime¹⁵² is not sufficient corroboration. Clear proof of motive of murder and discovery of minute blood spots on accused's shirt are not material corroboration¹⁵³. Facts which do not show the connection of the prisoner with the commission of the offence with which he is charged, are no corroboration in the sense in which the word is used in such cases although they may tend to show that certain portion of what the accomplice says is true¹⁵⁴. Where material discrepancies occur between the statements of the corroborating witnesses before the police and their deposition in court, either of inquiry or trial, there is no corroboration¹⁵⁵.

The testimony of the wife of an accomplice will not be considered corroborative of the evidence of her husband¹⁵⁶. This case was discussed by the court of criminal appeal in *R v Payne*¹⁵⁷, where it was pointed out that the decision only was that the wife's evidence could not be accepted "in a case like this¹⁵⁸". That wife's evidence cannot be regarded as independent corroboration has also been held in a case here¹⁵⁹. The more so

¹⁵⁰ *Saudagar v R*, 77 IC 895 : 5 LLJ 572.

¹⁵¹ *In re Talayari*, A 1939 M 469,

¹⁵² *Dhannu v R*, 2 PLT 757.

¹⁵³ *Jit Singh v R*, 86 PC 811.

¹⁵⁴ *R v Nawab Jan*, 8 WR Cr. 19.

¹⁵⁵ *Amar Das v R*, 36 PWR 1910

¹⁵⁶ *R v Neal*, 1835 7 C & P 168.

¹⁵⁷ 1913, 29 TR 250.

¹⁵⁸ *R v Wills*, 1916, 1 RB 933 Tav s. 970

¹⁵⁹ *Sultan v R*, 33 PLR 13.

if the wife is a consenting party to the crime and therefore is in the position of an accomplice¹⁶⁰. It is unsafe to convict on evidence of approver corroborated only by his son¹⁶¹. On a charge under s 377 PC the fact that other boys had been visiting the accused is no corroboration¹⁶².

(xviii) Corroboration by finger impressions:-

We shall now notice the worth of some such circumstantial evidence which comes up now and then for consideration. There may be cases in which finger impressions might have been left by the culprit in some article, for instance, on paper, or on the sill, the paint of which had been soft enough to retain impressions.

"Those who have made finger-prints their special study have come to the conclusion that their similarity is, as a rule, evidence of personal identity and their dissimilarity will, therefore as a rule, be evidence of the reverse¹⁶³.

Mr. Galton thus records the result of his examination of many sets of prints taken at different times and covering the interval from childhood to boyhood, from boyhood to early manhood, from early manhood to middle age and from middle age to extremely old age. "As there is no sign, except in one case, of change during any of these four intervals which together almost wholly cover the ordinary life of man, we are justified in inferring that between birth and death there is absolutely no change, in, say 699 out of 700 of the numerous characteristics of the markings of the fingers of the

¹⁶⁰ Ali Md v R, A1934 I, 171 Phullu v R. A1936 I, 731

¹⁶¹ Mehr v R, A1929 L 587

¹⁶² Bal Mukunda v R, 39 CWN 1051.

¹⁶³ Galton on Finger Prints chap. VI and VII. Banerjee J. in Rvs Fakirmo. sheikh, 1 G.W.N. 33.

same person such as can there be impressed by him when ever it is desirable to do so. Neither can there be any change after death up to the time the skin perishes through decomposition.

If the finger impression of the accused taken before or after the offence, agrees with the impression left on any article at the time of the commission of the offence, it is a very good corroboration of the story of the approver regarding the identity.

(xix) Corroboration by impressions of shoes, etc:-

"Similarly, the impressions of shoes, or of shoe-nails, or of other articles of apparel, or of patches, abrasions or other peculiarities therein, discovered in the soil or clay, or snow, at or near the scene of crime, recently after its commission, frequently lead to the identification and conviction of the guilty parties¹⁶⁴. To guard against error, it is manifest that the recency of the discovery and comparison of the impressions, relatively to the time of occurrence of the corpus delicti, and before any persons, other than the perpetrators of the offence may have resorted to the spot, is of the highest importance. The practice to give evidence that the shoes had been placed upon the footmarks and that the shoes when so placed fitted into the impression, is a very bad one, and vigorously denounced by Parke, J., who desired the Jury to reject absolutely such a method of identification¹⁶⁵ "Nor must it be overlooked, that even where the identity of footmarks has been established beyond all doubt, they may have been fabricated with the intention of diverting suspicion from the real offender,

¹⁶⁴ Wills Cr. Ev., 6th Edn. P. 214.

¹⁶⁵ R. v. Shant, (1830) 1 Lew. C.C. 116.

and fixing it upon an innocent party and that in other respects this kind of evidence may lead to erroneous interpretation and inference". The boots or shoes never ought to be put into the footprints at all. The impressions for comparison should be made by the side and at a sufficient distance from those in question. Where the character of the soil and the interval of time permit such a thing, the most satisfactory mode of proof is to dig out and preserve the original footprints, where that cannot be done, casts in plaster of paris should be taken. Where neither of these methods is adopted and the identification is sought to be established merely by the Police evidence, Juries are apt to pay very little attention to it.¹⁶⁶.

As regard footprints, Ogston¹⁶⁷ remarks that the impression by the naked foot varies in the same individual according to whether he was standing, walking or running at the time. Casts of footprints may be obtained by Hugolin's method, viz., heat the ground by holding over it a pan of burning charcoal, then dust stearic acid into the footprint, let this solidify and from the mould thus obtained take a cast in plaster of paris¹⁶⁸.

4-Corroboation in Sexual offences:-

"In sexual crimes, the other person-usually the woman-may or may not be an accomplice, according as she is, by the nature of the crime, a victim of it or a voluntary partner in it. Thus, in adultery, the other party may well be deemed an accomplice; and so also, perhaps, in incest, and in pandering or pimping. But the woman is not an accomplice in rape, rape

¹⁶⁶ Wills Cr. Ev., 6th Edn. p. 219-20.

¹⁶⁷ Lect. on Med. Jur. p. 63.

¹⁶⁸ Lyon's Medical Jurisprudence for India, 4th Ed., p. 147.

under age, seduction, or abortion, nor the participant in sodomy¹⁶⁹". A girl who is a victim of an outrageous act is, generally speaking not an accomplice, though the rule of prudence requires that the evidence of a prosecutrix should be corroborated before a conviction can be based upon it¹⁷⁰. Generally stated, an abducted woman is not an accomplice and her evidence does not require corroboration. But the rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, before a conviction without corroboration can be sustained¹⁷¹. A woman who has been raped is not an accomplice. If she was ravished, she is the victim of an outrage. If she consented, there is no offence unless she is a married woman, in which case questions of adultery may arise. But adultery presupposes consent and so is not on the same footing as rape. In the case of a girl who is below the age of consent, consent will not matter so far as the offence of rape is concerned, but if she consented, her testimony will naturally be as suspect as that of an accomplice. So also in the case of unnatural offences. But, in all these cases, a large volume of case-law has grown up which treats the evidence of the complainant somewhat along the same lines as accomplice evidence, though often for widely differing reasons, and the position now reached is that the rule about corroboration has hardened into one of law¹⁷². An accomplice is a person who voluntarily

¹⁶⁹ Wigmore, Ev. S. 2060.

¹⁷⁰ Sidheswar Ganguly vs state of westbengal AIR 1958 SC 143.

¹⁷¹ Dhaneshwar Takur vs state 1958 Cr. LJ. 929.

¹⁷² Rameshwar vs State of Rajashthan, 1952 Sc, 54.

participates in the commission of the crime along with others. In fact, he is as much an offender as the accused in the dock except that he is taken as a witness against the others. In the case of prosecutrix for rape, she is a victim of the offence and not an offender. If she is a consenting party, it ceases to be an offence except in the case of those who are below a certain age, and, in such cases, falsity is not so common as in the other cases. The case of an accomplice, therefore, materially differs from that of a prosecutrix for rape, and the evidence of both cannot be placed on the same footing¹⁷³.

In the case of an offence under Section 366, I.P.C., there should be corroboration of some material particular from some independent source and the bare statement of the prosecutrix is not sufficient to sustain the conviction of the accused. Where the statement of the raped girl can be relied upon, no corroboration is necessary¹⁷⁴.

For the establishment of the accusation of adultery, it is not necessary that someone who has seen the adulterous act must give evidence about it. Evidence of prior or subsequent acts of undue familiarity and opportunities for adultery in the context of other evidence of a circumstantial nature is sufficient¹⁷⁵. In *Loveden v Loveden*¹⁷⁶, Sir William Scott said, that it is not necessary to prove the direct fact of adultery. In every case almost, the fact is inferred from circumstances that lead to it by fair inference as a necessary conclusion; unless this was so held no

¹⁷³ ILR 1951 Mad 973.

¹⁷⁴ Dharampal vs state 1971 Cr LJ 1750.

¹⁷⁵ Vedavalli v. Ramaswami, A.I.R. 1964 Mys. 280.

¹⁷⁶ 161 E.R. 648.

protection whatever could be given to marital rights. What are the circumstances which lead to such a conclusion cannot be laid down universally because they may be infinitely diversified by the situation and character of the parties, by the state of general manners, and by many other incidental circumstances apparently slight and delicate in themselves, but which may have most important bearings in decision upon the particular case. The only general rule that can be laid down is that the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion. In *Preston Jones v. Preston Jones*¹⁷⁷ the House of Lords laid down that the evidence must be clear and satisfactory, beyond a mere balance of probabilities and conclusive in the sense that it will satisfy the guarded discretion of a reasonable and just man. In *Bipinchandra v. Prabhavati*¹⁷⁸, the Supreme Court enunciated the rule in the same way. It was pointed out that a spouse, accusing the other of any matrimonial offence, must prove the offence beyond reasonable doubt, and that where the evidence is that of the spouse, it is a rule of caution and prudence that that evidence should receive corroboration. If a person who is a party to an adulterous act were to make a confession that there was such adultery, that confession would be evidence against the other party to the act only, if the party making the confession give evidence about it¹⁷⁹.

In sum, a girl who is a victim of an outrageous act is, generally speaking, not an accomplice, though the rule of prudence requires that the evidence of a prosecutrix should be corroborated before a conviction can

¹⁷⁷ (1951) 1 All E.R. 12.

¹⁷⁸ 1956 S.C.R. 838 : A.I.R. 1957 S. C. 176.

¹⁷⁹ Vedavalli v. Ramaswami, A.I.R. 1964 Mys. 280.

be based upon it¹⁸⁰. The Supreme Court has approved of the charge to the Jury, namely, that in a sexual offence, like rape, corroboration of the victim is not essential before conviction but being a matter of prudence, the Jury must consider advisability of corroboration. Although the law does not require corroboration of the victim in order to substantiate the charge of rape, one should not readily accept her testimony, for it is not wise to do so in the absence of some corroboration of her testimony. In *Rameshwar v. State of Rajasthan*¹⁸¹, it was said that the nature and extent of the corroboration must necessarily vary with the circumstance of each case and also according to the particular circumstances of the offence charged. It is not necessary that there should be independent confirmation of every material circumstances, that is, the independent testimony should not, itself, be sufficient to sustain conviction. All that is required is that there must be some additional evidence, direct or indirect rendering it probable that the story is true and that it is reasonably safe to act upon it. In *A.W. Khan v. State*¹⁸², it was said that, in a case of rape, independent confirmation of every material circumstances is not required and the corroboration need not be direct evidence that the accused committed the crime, but, it is sufficient if it is merely circumstantial evidence of his connection with the crime. The two decisions of the Supreme Court, namely, *Rameshwar v. State of Rajasthan*¹⁸³ and *Sidheshwar Ganguly v. State of West Bengal*¹⁸⁴ make it clear that -

¹⁸⁰ 1958 S.C.R. 749.

¹⁸¹ 1952 S.C.R. 377.

¹⁸² AIR 1962 C. 641.

¹⁸³ 1952 S.C.R. 377 : A.I.R. 1952 S.C. 54.

¹⁸⁴ 1958 S.C.R. 79 : A.I.R. 1958 S.C. 143, 147.

- (1). the prosecutrix in a case of rape cannot be treated as an accomplice, and consequently, the principle requiring corroboration in respect of an accomplice witness cannot have application in considering the evidence of a prosecutrix in a rape case;
- (2) this Act does not provide that the evidence of a prosecutrix in a rape case requires corroboration ; and
- (3) as a matter of caution and prudence, Courts insist on the need of corroboration of the evidence of the prosecutrix.

The only rule of law is that this rule of caution and prudence must be present to the mind of the Judge or the jury and be understood and appreciated by him or them. There is not rule of practice that there must, in every case, be corroboration, before a conviction can be allowed to stand. The independent evidence must not only make it safe to believe that the crime was committed, but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the victim. There can not be any hard and fast rule as to the nature and extent of the evidence required to corroborate the case. The corroboration should be such as to render the prosecution story reliable and safe to act upon¹⁸⁵. The test as to where corroboration is necessary lies in the naturalness of the story deposed to by the victim. If there be any doubt as regards its genuineness, there is the need of caution and, therefore, of corroboration. For this purpose, it is not necessary that the entire story should appear doubtful, it is sufficient if any part of the narration has the

¹⁸⁵ Rameshwar vs State of Rajasthan 1952 S.C.R. 377.

semblance of exaggeration or artificiality¹⁸⁶. The questions whether the statement of the victim requires corroboration, and in what particulars, and what kind of corroboration should be considered sufficient, are, in the ultimate analysis, questions relating to the correct and proper appreciation of evidence, and must be answered with reference to the facts and the circumstances of individual cases and the principles, laid down in the cases, should be looked upon as merely guiding principle and not as inflexible rule of law¹⁸⁷.

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¹⁸⁶ Government , M.P. vs Sheodayal Gurudayal AIR 1956 Nag. 8.

¹⁸⁷ Gop Shankar vs state of Rajasthan, 1967 Raj. 159.