

CHAPTER-IX

JUDICIAL TRENDS

In terms of Article 141 of the Constitution, the Supreme Court is enjoined to declare law. The term 'declared' is wider than the term 'found' or 'made'. To declare means to announce opinion. Indeed the term "made" involves a process, while the term "declare" expresses result. The law declared by the Supreme Court is the law of the land. It is a precedent for itself and for all Courts/tribunals and authorities in India.¹ To deny this power to the Supreme Court on the footing that it only "finds" law but does not "make" it, is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary.

While the position of the Supreme Court is subordinate to the Legislature, it must be recognised that in the Supreme Court's effort to achieve its purpose of 'declaring' the law, creativity is involved. A statute is binding; but it is the statute, as interpreted by the Supreme Court that is binding on all other Courts. The Supreme Court is not mere interpreter of the existing law. As a wing of the State, it is a source of the law. Therefore, mere legislature provisions cannot fill the gap of huge lacunas of the existing laws. Therefore, the Supreme Court and the High Courts of this country and earlier the House of Lords, the Privy Council as well as, the existing High Courts before 26 Jan 1950, have contributed a lot in the development of law in various fields. The same is exactly applicable with reference to the testimony of an accomplice. The objection which was

¹ Rupa Ashok Hurra vs Ashok Hurra (2002) 4 SCC 388.

made by *Markby* about incorporation of Section in 133 of the Evidence Act is :

*"I do not quite know why this section was inserted. It was not necessary as a 118 makes all persons competent to testify except those there enumerated. Nor is there any rule which requires that evidence of an accomplice should be corroborated. But the emphatic statement in this section might lead persons to suppose that the legislature desired to encourage convictions on the uncorroborated evidence of an accomplice. This however, cannot have been the case because in s 114 we find given as one of the presumption that an accomplice is unworthy of credit unless he is corroborated in material particulars. It would therefore have been better to omit this section. The law on the subject would then have been the same as it is now, and the awkwardness of appearing to sanction a practice as universally condemned would be avoided."*²

This has been removed by the judgments of various High Courts, Privy Council, Federal Court and Supreme Court of India. An effort, in this chapter has been made to study the attitude of the courts towards the testimony of an accomplice.

Taylor, in his treatise has observed that "accomplices who are usually interested and always infamous witnesses, and whose testimony is admitted from necessity, it being often impossible, without having recourse to such evidence, to bring the principal offenders to justice."³

In *R. v. Baskerville*,⁴ which is a leading case on this aspect, the

2 [Markby p. 98]

3 Taylor in "A Treatise on the Law of Evidence (1931) Vol. 1 para 967

4 1916 (2) KB 658.

accused was convicted for committing gross acts of indecency with two boys who were treated as accomplices since they were freely consenting parties. Dealing with their evidence Lord Reading, the Lord Chief Justice of England, observed that though there was no doubt that the uncorroborated evidence of an accomplice was admissible in law it was for a long time a rule of practice at common law for the Judge to warn the Jury of the danger of convicting a person on the uncorroborated testimony of an accomplice. Therefore, though the Judge was entitled to point out to the Jury that it was within their legal province to convict upon the unconfirmed evidence of an accomplice, the rule of practice had become virtually equivalent to a rule of law and therefore in the absence of a proper warning by the Judge the conviction could not be permitted to stand. If after being properly cautioned by the Judge the Jury nevertheless convicted the prisoner, the Court would not quash the conviction merely upon the ground that the accomplice's testimony was uncorroborated. Lord Reading, CJ, laid the test that the corroboration need not be direct evidence that the accused committed the crime. It is merely circumstantial evidence of his connection with the crime. The nature of the corroboration will depend and vary according to the particular circumstances of each case. What is required is some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon. It was further stated by Lord Reading:

"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 an accomplice, and, in the discretion of the judge, to advise them not to convict upon such evidence; but the judge should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence.....In addition to the rule of practice above mentioned, there are, with regard to certain offences, statutory provisions that no person shall be convicted upon the evidence of one witness, unless such witness be corroborated in some material particular implicating the accused, e.g., the Criminal Law-Amendment Act, 1885, ss. 2-3. In these cases, the law is that the judge, in the absence of such corroborative evidence, must stop the case at the close of the prosecution and direct the jury to acquit the accused. Where no such statutory provision is applicable to the offence charged, and the evidence for the prosecution consists of the uncorroborated testimony of an accomplice, the law is that the judge should leave the case to the jury after giving them the caution already mentioned.....As to the nature and extent of the corroboration required.....we have come to the conclusion that the better opinion of the law upon this point is that stated in R. v. Stubbs,⁵ namely, that the 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. The learned Baron does not mean that is unnecessary. It is sufficient if there is confirmation of all the circumstances of the crime that is unnecessary. It is sufficient if there is confirmation as to a material circumstance of the crime and of the identity of the prisoner..... The test

5 (1855) Dears, C.C. 555, by Parke B.

applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within corroboration is required by statute.....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.....⁶ The learned Baron said: "Where there is one witness of bad character giving evidence against both prisoners, a confirmation of his testimony with regard to one, is no confirmation of his testimony as to the other".

The view advocated in *Bhuboni Sahu v. The King*,⁷ has been accepted, approved and applied in series of cases.⁸ It further observed that the rule requiring corroboration for acting upon the evidence of an accomplice is a rule of prudence. But the rule of prudence assumes great significance when its reliability on the touchstone of credibility is examined. If it is found credible and cogent, the Court can record a conviction even on the uncorroborated testimony of an accomplice.

In *Rameshwar v. State of Rajasthan*⁹, Bose, J., after referring to the rule laid down in *Baskerville* case with regard to the admissibility of the uncorroborated testimony of an accomplice, held:

"That, in my opinion, is exactly the law in India so far as accomplices are concerned and it is certainly not any higher in the case of sexual offences. The only clarification necessary for purposes of this

6 R.v. Jenkins (1845) 1 Cox CC. 177.

7 76 IA 147

8 State of Bihar v. Basawan Singh, 1959, SCR 195; Hari Charan Kurmi v. State of Bihar, 1964(6) SCR 623; Haroon Haji Abdulla v. State of Maharashtra, 1968 (2) SCR 641; and Ravinder Singh v. State of Haryana, 1975 (3) SCR 453)

9 (AIR) 1952 SC 54)

country is where this class of offence is sometimes tried by a judge without the aid of a jury. In these cases it is necessary that the judge should 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 in that particular case." Justice Bose in the same judgment further observed:

"I turn next to the nature and extent of the corroboration required when it is not considering safe to dispense with it. Here, again, the rules are lucidly expounded by Lord Reading in Baskerville case at pages 664 to 669. 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 circumstances of each case and also according to the particular the offence charged. But to this extent the rules are clear."

After making a survey of the case law by referring to *Dagdu v. State of Maharashtra*,¹⁰ has laid down the following legal position "There is no antithesis between Sec. 133 and Illustration (b) of Section 114 of the Evidence Act because the Illustration only says that the Court 'may' presume a certain state of affairs. It does not seek to raise a conclusive and irrebuttable presumption. Reading the two together the position which emerges is that though an accomplice is a competent witnesses and though a conviction may lawfully rest upon his uncorroborated testimony, yet the

10 (AIR 1977 SC 1579)

Court is entitled to presume and may indeed be justified in presuming in the generality of cases that no reliance can be placed on the evidence of an accomplice unless that evidence is corroborated in material particulars, by which is meant that there has to be some independent evidence tending to incriminate the particular accused in the commission of the crime. It is hazardous, as a matter of prudence, to proceed upon the evidence of a self-confessed criminal, who, in so far as an approver is concerned, has to testify in terms of the pardon tendered to him. The risk involved in convicting an accused on the testimony of an accomplice, unless it is corroborated in material particulars, is so real and potent that what during the early development of law was felt to be a matter of prudence has been elevated judicial experience into a requirement or rule of law. All the same, it is necessary to understand that what has hardened into a rule of law is not that the conviction is illegal if it proceeds upon the uncorroborated testimony of an accomplice but that the rule of corroboration must be present to the mind of the Judge and that corroboration may be dispensed with only if the peculiar circumstances of a case make it safe to dispense with it."

In *Davies v. Director of Public Prosecutions*¹¹ it was held that in a criminal trial it is the duty of the judge to warn the jury that it is dangerous to convict upon the uncorroborated evidence of an accomplice. This practice has the force of rule law. Accomplice includes participants in the crime charged, receivers in respect of thieves from whom they receive goods, and parties to crimes, which constitute similar facts. Whether a

¹¹ 1954 A.C. 378.

witness is an accomplice is a question of fact.

It would not be expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such as view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.¹²

The Hon'ble Supreme Court in *S. Swaminathan v. State of Madras*,¹³ has held that corroboration of approver's evidence need not be of a kind which prove the offence against the accused. It is sufficient if it connects the accused with the crime when the accused had been charged for the offences of conspiracy and of cheating, a specific instance of cheating proved beyond doubt against one of the accused would furnish the best corroboration of the offence of the conspiracy.

In *Sarvan Singh v. The State of Punjab*,¹⁴ relied by Shri Raju Ramachandran, this Court held that the approver must be a reliable witness and the evidence must receive sufficient corroboration. In that case the corroboration of minor particulars was accepted to be sufficient to hold the approver to be reliable witness.

The moment there is corroborative evidence, which connects or

12 Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637.

13 AIR 1957 SC 340

14 1957 S.C.R. 953

tends to connect an accused with the crime such corroborative evidence relates to the identity of the accused in connection with that crime. It is the approver's evidence which is the direct evidence of the crime. There should be corroboration in material particulars not only concerning the crime but corroboration of the approver's story by evidence which connects or tends to connect an accused with the crime. It is this corroborative evidence which determines the mind of the court or a jury that the approver's evidence that the accused committed the crime is true.¹⁵

The Apex Court in *Jnanendra Nath Ghose v. The State of West Bengal*,¹⁶ has observed that there should be corroboration in material particulars of the Approver's statement, as he is considered as a self confessed traitor.

As regards corroboration of accomplice witnesses it is not necessary that there should be independent corroboration of every material circumstances. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplices or the complainant 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.¹⁷

It has been observed by the Supreme Court in *K.M. Nanavati v. State of Bombay*,¹⁸ pardon is one of many prerogatives which have been recognized since time immemorial as being vested in the sovereign,

15 *Jnanendra Nath Ghose v. State of W.B.* AIR: 1959 SC 1199.

16 1960 (I) SCR 126

17 *Ramanlal Mohanlal Panday v. State of Bombay*, AIR 1960 SC 961.

18 AIR 1961 SC 112

wherever the sovereignty might be. The Constitution of India in Arts 72 and 161 and also in Sec. 432 and 433. Criminal, Procedure Code 1973. These provisions relate to the grant of a pardon after sentence has been removed and the tender of pardon to an accomplice under certain condition as contemplated by Secs. 306 and 307, Criminal Procedure Code. There is no doubt that the grant of pardon, whether it is under Art. 161 or Art 72 of the Constitution or under Secs. 337, 338, 401 and 402 old Criminal Procedure Code, is the exercise of the sovereign power."

In *B.D. Patil v. State of Maharashtra*,¹⁹ this Court held that the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the courts will, as a matter of practice do not accept the evidence of such a witness without corroboration in material particulars. There should be corroboration of the approver in material particulars and must be qua each accused.

Reading Section 133 and illustration (b) to S. 114 of the Evidence Act, together it follows that though an accomplice is a competent witness, prudence requires that his evidence should not be acted upon unless it is materially corroborated. The point of significance is that when the Court deals with the evidence by an accomplice, the Court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of the accomplice is evidence under S.3 of the Evidence Act and has to be dealt with as such. It is no doubt evidence of tainted character and as such, is very weak; but, nevertheless,

19 1963 (3) S.C.R. 830

it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars.²⁰

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 a truthful witness. The corroboration need not be direct evidence of the commission of the offence by the accused. If it is merely circumstantial evidence of his connection with the crime it will be sufficient and the nature of the corroboration will depend on and vary with the circumstances of each case.²¹

The Evidence Act in S. 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 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 S. 114 of the Act which provides that the Court may presume that 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, there may be no means at hand to sever the false from that which is true. It is for this reason that courts, before they act on accomplice

20 *Harricharan Kurmi v. State of Bihar*, AIR 1964 SC 1184 at p. 1189.

21 *Kanbi Karsan Jadav v. State of Gujarat*, AIR 1966 SC 821 at p. 823.

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 accomplice evidence as to have almost the standing of a rule of law.²²

It is not that every detail of the story of the accomplice need be confirmed by independent evidence although some additional independent evidence must be looked for to see whether the approver is speaking the truth and there must be some evidence, direct or circumstantial which connects the co-accused with the crime independently of the accomplice.

It is well settled that the appreciation of 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 the 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.²³

The warning of the danger of convicting on uncorroborated evidence is given when the evidence is that of an accomplice. The primary meaning of accomplice is any party to the crime charged and some one who aids and abets the commission of crime. The nature of corroboration is that it is

22 *Harron Haji Abdulla v. State of Maharashtra* AIR 1968 SC 832 at pp. 835-36.

23 *Piara Singh v. State of Punjab* AIR 1969 SC at p. 965, *Ranjeet Singh v. State of Rajasthan* AIR 1988 SC 672 at p. 674.

confirmatory evidence and it may consist of the evidence of second witness or of circumstances like the conduct of the person against whom it is required. Corroboration must connect or tend to connect the accused with the crime. When it is said that the corroborative evidence must implicate the accused in material particulars it means that it is not enough that a piece of evidence tends to confirm the truth of a part of the testimony to be corroborated. The evidence must confirm that part of the testimony which suggests that the crime was committed by the accused. The first test of reliability of approver and accomplice evidence is for the court to be satisfied that there is nothing inherently impossible in evidence. After that conclusion is reached as to reliability, reasoning that there must be sufficient corroborative evidence in material particulars to connect the accused with the crime.²⁴

The combined effect of Sections 133 and 114 illustration (b) of the Evidence Act is that though a conviction based upon accomplice evidence is legal the court will not accept such evidence unless it is corroborated in material particulars. The corroboration must connect the accused with the crime. It may be direct or circumstantial. It is not necessary that the corroboration should conform all the circumstances of the crime. It is sufficient if the corroboration is in material particulars. The corroboration must be from an independent source. One accomplice cannot corroborate another.²⁵

*In Md. Hussain Umar Kochra etc. v. K.S. Dalipsinghji & Anr.*²⁶ it

²⁴ Sheshanna Bhumanna Yadav v. State of Maharashtra, AIR 1970 SC 1330 at pp. 1332-33.

²⁵ Mohd. Husain Umar Kochra v. K.S. Dalipsinghji, AIR 1970 SC 45.

²⁶ AIR 1970 SC 45.

was held that the combined effect of ss. 133 and 114 (b) is that though a conviction based upon accomplice evidence is legal the court will not accept such evidence unless it is corroborated in material particulars. The corroboration must be from an independent source. If several accomplices simultaneously and without previous concert giving consistent account of the crime implicating accused, the court may accept the several statements as corroborating each other.

The prosecutrix cannot be considered to be an accomplice. Courts should normally look for some corroboration of her testimony in order to satisfaction that the prosecutrix is telling the truth and that a person, accused of abduction or rape, has not been falsely implicated. The only rule of law the rule of prudence namely the advisability of corroboration should present in the mind of the judge or the jury, as the case may be. There no rule of practice that there must in every case, be corroboration before a conviction can be allowed to stand.²⁷

The statute permits the conviction of an accused person on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in illustration (b) of S. 114 of the Evidence Act strikes a note of warning cautioning the Court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. This rule of caution is traceable to the fact that an accomplice witness from the very nature of his position is a suspect. This rule is guided by long human experience and has become a rule of prudence of general application. The

²⁷ Gurucharan Singh v State of Haryana, AIR 1972 SC 2661.

Courts, therefore, consider it prudent to look for corroboration in material particulars for sustaining the conviction of an accused person.²⁸

Where the evidence of an accused is held as accomplice evidence the court has to see whether such evidence is reliable and whether it is corroborated in material particulars by other independent evidence direct or circumstantial. Such corroboration need not, on the one hand, be of every particular given by an accomplice, and on the other hand, of only minor particulars. The corroboration must be adequate enough to afford the necessary assurance that the main story testified by the accomplice can be reasonably and safely accepted as true.²⁹

In *Ram Narain v. State of Rajasthan*,³⁰ this Court held that s. 114 (b) strikes a note of warning, cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration is as matter of prudence except when it is safe to dispense with such corroboration must be clearly present to the mind of the Judge.

It is established as a rule of prudence that the testimony of an accomplice if it is thought reliable as a whole conviction could only be based if it is corroborated by independent evidence either direct or circumstantial connecting the accused with the crime.³¹ It was held, that it was hazardous to rely on the testimony of a witness, which is admittedly of an accomplice character. Where from the evidence of certain witnesses it

28 *Ram Narain v. State of Rajasthan*, AIR 1973 SC 1188 at p. 1192

29 *Tribhuvan Nath. V. State of Maharashtra* AIR 1973 SC 450

30 1973 (3) S.C.C. 805

31 *Ravinder Singh v. State of Haryana*, (1975) 3 SCR 453

appears that they were also co-conspirators, in the circumstances, the evidence of these witnesses was that of accomplices and could not be accepted without further corroboration.

Again in *Dagdu and others v. State of Maharashtra*,³² this Court declared:

"there is no antithesis between Section 133 and illustration (b) to Section 114 of the Evidence Act, because the illustration only says that the Court 'may' presume a certain state of affairs. It does not seek to raise a conclusive and irrebuttable presumption. Redding the two together the position which emerges is that though an accomplice is a competent witness and though a conviction may lawfully rest upon his uncorroborated testimony, yet the court is entitled to presume and may indeed be justified in presuming in the generality of cases that no reliance can be placed on the evidence of an accomplice unless that evidence is corroborated in material particulars, by which is meant that there has to be some independent evidence tending to incriminate the particular accused in the commission of the crime".

Though an accomplice is a competent witness and though a conviction may lawfully rest upon his uncorroborated testimony, yet the court is entitled to presume and may indeed be justified in presuming in the generality of cases that no reliance can be placed on the evidence of an accomplice unless that evidence is corroborated in material particulars, by which is meant that there has to be some independent evidence tending to

32 1977 (3) SCC 68

incriminate the particular accused in the commission of the crime.³³ 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 and even Section 133 of the Evidence Act clearly provides that the evidence of an accomplice witness should not be accepted unless corroborated. At the same time, it must be remembered that 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 done then the very necessity of corroboration is frustrated.³⁴

In *G.S. Bakshi v. state (Delhi Administration)*³⁵ was dealing with a converse case that if the evidence of an accomplice is inherently improbable then it cannot get strength from corroboration.

A witness who could go to the extent of making intentionally false statement cannot be relied upon for the purpose of convicting the accused. On his own showing he was fully collaborating with the accused in a criminal design and was therefore no better than an accomplice whose testimony cannot be accepted in any material particular in the absence of corroboration from reliable sources. On an appreciation of his evidence it was found that his evidence was not only not corroborated but was

33 *Dagdu v. State of Maharashtra* AIR 1977 SC 1579.

34 *Chonampara Chellappan v. State of Kerala*, AIR 1979 SC 1761 at p. 1762

35 (AIR 1979 SC 569)

definitely contradicted by other witnesses, circumstances and documents.³⁶

This Court in *Bhiva Doulu Patil v. State of Maharashtra*,³⁷ has held that the combined effect of Sections 133 and 114 illustration (b) of the Evidence Act was that an accomplice is competent to give evidence but it would be unsafe to convict the accused upon his testimony alone. Though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. In coming to the above conclusion we have not unmindful of the provisions of S. 133 of the Evidence Act which reads: "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." It cannot be doubted that under that section a conviction based merely on the uncorroborated testimony of an accomplice may not be illegal, the Courts nevertheless cannot lose sight of the rule of prudence and practice which in the words of Martin B. in *R.V. Boyes*,³⁸ has become so hallowed as to be deserving of respect and the words of Lord Abinger "It deserves to have all the reverence of the law: " This rule of guidance is to be found in illustration (b) to S. 114 of the Evidence Act which is as follows: "The Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars." The word 'corroboration' means not mere evidence tending to confirm other evidence.

36 Kanan v. State of Kerala AIR 1979 SC 1127; Gulam Mohamood A. Malek v. State of Gujarat AIR 1980 SC 1558 at p. 1559.

37 AIR 1963 SC 599.

38 (1861) 9 Cox CC 32

In *Balwant Kaur v. Union Territory, Chandigarh*,³⁹ the Hon'ble Court, while referring Section 114, Illustration (b), of Evidence Act, has held that extent of corroboration of evidence of approver varies with nature and circumstances of each case. Enunciation of any general rule valid for all occasions is unwise and unpractical. The nature and extent of the corroboration must necessarily vary with the nature and circumstances of each case. Enunciation of any general rule, valid for occasions is at once, unwise and unpractical. The aspect as to the extent and content of independent corroboration is, again, an interesting area of study. One view was that independent evidence tending to verify and part of the testimony of the accomplice should suffice. The other view required that the corroborative evidence should not only show that part of accomplice testimony is true; but should go further and also implicate the other accused.

While looking for corroboration, a court must first look at the broad spectrum of the approver's version and then find out whether there is other evidence to lend assurance to that version. The nature and extent of the corroboration may depend upon the facts of each case. The corroboration need not be of any direct evidence that the accused committed the crime. The corroboration even by circumstantial evidence may be sufficient. But such evidence as to corroboration must be independent and must not be vague or unreliable.⁴⁰

So far as the question about the conviction based on the testimony of

39 1987 SOL Case No. 006

40 Ranjeet Singh v. State of Rajasthan, AIR 1988 SC 672 at p. 674

the accomplice is concerned the law is settled and it is established as a rule of prudence that the testimony of a accomplice if it is though reliable as a whole conviction could only be based if it is corroborated by independent evidence either direct or circumstantial connecting the accused with the crime. Thus where in the murder case there was no direct evidence regarding recovery of articles, but so far as the identification evidence was concerned the witness who had identified the articles at the parade was not examined at the trial, his evidence could not be used to corroborate the evidence of the approver because (i) what he identified and stated to the Magistrate who conducted the identification parade is only a hear-say evidence as that evidence could be used to corroborate his testimony if he was examined at the trial; and (ii) what he stated to the Magistrate at the time of test identification parade is not subjected to cross examination and was at the back of the accused and hence could not be used as evidence against the accused. Moreover, the version given by the approver did not appear to be natural, the conviction of the accused was, therefore, liable to be set aside.⁴¹

The testimony of an accomplice is, no doubt, stigmatized evidence in criminal proceedings. It is on account of the inherent weakness that such evidence is endowed with that illustration (b) to Section 114 of the Evidence Act suggests that it is open to the Court to presume that the uncorroborated testimony of an accomplice is unworthy of credit. But the legislature had advisedly refrained from including the said category of evidence within the ambit of legal presumptions but retained it only within

41 Chandan v. State of Rajasthan, AIR 1988 SC 599 at pp. 600-602.

the area of factual presumptions by using the expression "the Court may presume". In order to make the position clear the same enactment has incorporated Section 133 saying that it is not illegal to convict a person on the uncorroborated testimony of an accomplice. The *raison d'etre* for such legislative marshalling is to an accomplice in appropriate cases, even without corroboration, if the Court feels that a particular accomplice evidence is worthy of credence. Thus, the law is not that the evidence of an accomplice deserves outright rejection if there is no corroboration. What is required is to adopt great circumspection and care when dealing with the evidence of an accomplice. Though there is no legal necessity to seek corroboration of accomplice's evidence it is desirable that Court seeks reassuring circumstances to satisfy the judicial conscience that the evidence is true.⁴²

In *Chandan & Omprakash v. State of Rajasthan*,⁴³ it was held that section 133 of the Evidence Act is also of significance. It relates to the evidence of an accomplice. In positive terms it provides that the conviction based on the evidence of an accomplice is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, because the accomplice is a competent witness.

In *State (Delhi Administration) v. Jagjit Singh*,⁴⁴ the Hon'ble Court has upheld that Section 306 Cr.P.C. enjoins upon approver to make a full and clean disclosure. State cannot withdraw the pardon nor approver can cast away pardon. Section 306 (4) Cr.P.C. enjoins upon prosecution to

42 State of T.N. v. Suresh, AIR 1988 SC 1044 at pp. 1048-50.

43 1988 AIR 599

44 1988 SOL Case No. 006

examine the approver both in committing and trial courts unless Public Prosecutor certifies that approver willfully concealed anything essential and gave false evidence. Approver may then be tried under Section 308 Cr.P.C. in the nature of a contract between the State granting the pardon on the one hand and the person accepting the pardon on the other hand. The power to grant pardon carries with it the right to impose a condition limiting the operation of such a pardon. Hence a pardoning power can attach any condition, precedent or subsequent so long as it is not illegal, immoral or impossible of performance. Section 306 clearly enjoins that the approver who was granted pardon had to comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other concerned whether as principal or abettor, in the commission thereof. It is because of this mandate, the State cannot withdraw the pardon from the approver nor the approver can cast away the pardon granted to him till he is examined as a witness by the prosecution both in the Committing Court as well as in the trial court.

In *Sevaka Perumal etc. v. State of Tamil Nadu*,⁴⁵ it has been held that under s. 133 of the Evidence Act 1 of 1872, 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. Section 114 illustration (b) postulates that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

45 1991 SOL Case No. 088.

In *Union of India v. J.S. Brar*,⁴⁶ it was held that evidence of accomplice can be taken into account if corroborated by material particulars by independent evidence.

Same principle was laid down in *Capt. Harish Uppal v. Union of India*⁴⁷ The Statute permits the conviction of an accused on the basis of uncorroborated testimony of an accomplice but the rule of prudence embodied in illustration (b) to Section 114 of the Evidence Act strikes a note of warning cautioning the Court that an accomplice does not generally deserve to be believed unless corroborated in material particulars. In other words, the rule is that the necessity of corroboration is a matter of prudence except when it is safe to dispense with such corroboration must be clearly present in the mind of the Judge.⁴⁸

In *Shankar alias Gauri Shankar v. State of Tamil Nadu*,⁴⁹ it is held that Section 133 and illustration (b) to Section 114 of the Evidence Act deal with the law relating to an accomplice evidence. An accomplice namely a guilty associate in crime is a competent witness. Section 133 lays down that the conviction based on the uncorroborated testimony of an accomplice is not illegal, but the rule of guidance indicated in illustration (b) to Section has resulted in the settled practice to require corroboration of evidence of an accomplice and which has now virtually assumed the force of a rule of law. The Evidence Act has not defined the word 'accomplice'

46 1992 SOL Case No. 168.

47 1973 (3) SCC 319; Ram Narain v. State of Rajasthan, 1973 (3) SCC 805; Chonampara Chelleppan v. State of Kerala, 1979 (4) SCC 312; Bhuboni Sahu v. The King, AIR 1949 Privy Council 257; Shrishail Nageshi Pare v. State of Maharashtra, 1985 (2) SCC 341; Brij Bhushan Singh v. Emperor, AIR 1946 Privy Council 38; Abdul Sattar v. Union Territory, Chandigarh, 1985 (Supp) SCC 599.

48 Suresh Chandra Bahri v. State of Bihar (AIR 1994 SC 2420)

49 1994 SOL, Case No. 087

and it is generally understood that an accomplice means a guilty associate or partner in crime. An accomplice by becoming an approver becomes a prosecution witness. In interpretation of Section 133 and illustration (b) to Section 114, the Courts have laid down that an approver's evidence has to satisfy a double test; (1) his evidence must be reliable and (2) his evidence should be sufficiently corroborated.

Coming to the extent and nature of corroboration, the Courts have held that ordinarily the approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal and furnishing the need and assurance for acceptance of his testimony. The corroboration need not be of a kind which proves the offence against and accused and it would be sufficient if it connects the accused with the crime. What 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. Such corroboration should be on material particulars and qua each accused. But it is not necessary that there should be independent corroboration of every material circumstance and it need not consist of evidence which standing alone would be sufficient to justify the conviction.⁵⁰

Identical point came into consideration in the case of *M.O. Shamshudhin v. State of Kerala*⁵¹, wherein the Supreme Court held as under:

"Now coming to the nature of corroborating evidence that is

⁵⁰ Ravindra Singh v. State of Punjab, AIR 1975 SC 856, Rameshwar v. State of Rajasthan, AIR 1952 SC

⁵⁴, Tirubhawan Nath v. State of Maharashtra, AIR 1973 SC 450.

⁵¹ (1995) 3 JT (SC)

required, it is well-settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The Court should weigh the evidence and then see whether corroboration is necessary. Therefore as a rule of law it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and circumstances of each case."

This Court in *Suresh Chandra Bahri v. State of Bihar*.⁵² The object of Section 306 is to allow pardon in cases where heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the extent of the culpability of the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence.

This Court in *Niranjan Singh v. State of Punjab*,⁵³ held that once the evidence of the Approver is held to be trustworthy, it must be shown that the story given by approver so far as an accused is concerned, must

⁵² 1995 Supp. (I) SCC 80.
⁵³ JT 1996 (5) SCC 582.

implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. Insistence upon corroboration is based on the rule of caution and not merely a rule of law.

In *State of Tamil Nadu, v. Suresh*,⁵⁴ court has freedom to act on evidence of accomplice in appropriate cases even without corroboration, if court feels that evidence is worthy of credence.

Where in a murder trial the evidence of accomplice was not totally bereft of reassuring circumstances, accused could be convicted on basis of such evidence.⁵⁵

Identical question also figured for decision in the case of *State of T.N. vs. Suresh*⁵⁶ where in it was reiterated that the law is not that the evidence of an accomplice deserves outright rejection if there is no corroboration. What is required is to adopt great circumspection and care when dealing with the evidence of an accomplice. Though there is no legal necessity to seek corroboration of accomplice's evidence it is desirable that Court seeks reassuring circumstances to satisfy the judicial conscience that the evidence is true.

Where the confessional statement given by an approver to the Magistrate before pardon was tendered to him, was projected as a material for corroboration, it was held that though legally it could be used as a corroborative material great weight could not be attached to it since was only the former statement of an accomplice.⁵⁷

54 1997 SOL Case No. 047

55 *State of T.N. Suresh*, AIR 1998 SC 1044 at pp. 1048-50.

56 AIR 1998 SC 1044.

57 *Ramprasad v. State of Maharashtra*, AIR 1999 at p. 1974.

In *State of Kerala v. P. Sugathan*,⁵⁸ it was held that an accomplice is a competent witness and conviction can be based upon his testimony if it is otherwise corroborated in material particulars.

In *Narayan Chetanram Chaudhar v. State of Maharashtra*,⁵⁹ it has been held that there is no distinction between an accomplice who is or is not an Approver and both have been treated alike. Rule of corroboration applies to both. Evidence of accomplice is taken on record as a matter of necessity in cases where it is impossible to get sufficient evidence of a heinous crime unless one of the participators in the crime is disposed to disclose.

Though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the Courts will; as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. For corroborative evidence the Courts must look at the broad spectrum of the approver's version and then find out whether there is other evidence to corroborate and lend assurance to that version. The nature and extent of such corroboration need not be in the form of ocular testimony of witnesses and may be even in the form of circumstantial evidence. Corroborative evidence must be independent and not vague or unreliable.⁶⁰ Where the statement of accomplice was vivid in explanation and inspire full confidence of the Court to pass the conviction of the accused for the offences with which they were charged and the corroborative evidence the aforesaid statement left no doubt in the mind of

58 2000 SOL Case No. 545.

59 2000 SOL Case No. 505

60 *Narayan Chetanram Chaudhary v. State of Maharashtra*, AIR 2000 SC 3352 at pp. 3363.

the Court regarding the involvement of the accused persons in the commission of the crime for which they had been convicted and sentenced, such conviction basis of testimony of accomplice would not be liable to be set aside.⁶¹

Where in a murder case, an accomplice was found to have validly granted pardon and the accused was afforded sufficient opportunity cross-examining him, the whole deposition of the accomplice was an explanation of the manner in which the offence was committed by the accused, and the circumstantial evidence produced in case was sufficient to connect accused with commission of murder, it was held that it was not correct to say that the conviction of the accused is solely based upon the testimony of the accomplice or that his deposition is not corroborate in material particulars, and thus it was held that the accused was rightly convicted.⁶²

In *Narayan Chetanram Chaudhary & Anr. Vs. State of Maharashtra*,⁶³ it was held that the plea that statement of accomplice is required to be recorded first in Court of Magistrate and subsequently in trial Court is not tenable. Section 306 is applicable where order of commitment has not been passed and Section 307 is applicable in cases after commitment of case but before judgment is pronounced. After commitment pardon is to be granted by trial Court. It was further held that delay in recording approver's statement by itself is not a ground to reject testimony of accomplice as there is no time limit for recording statement of accomplice.

61 Ibid. p. 3367.

62 State of Kerala v. P. Sugathan, AIR 2000 SC 3323 at p. 3330.

63 [2000] RD -SC 468.

In the case of *Jasbir Singh vs. Vipin Kumar Jaggi*⁶⁴ it was observed by the Apex Court that "in any case the evidence of an approver does not differ from the evidence of any other evidence except that his evidence is looked upon with great suspicion. But the suspicion may be removed and acceptable then that evidence might well be decisive in securing conviction."

In *Konajeti Rajbabu v. State of A.P.*⁶⁵ it was held that reason for tendering pardon should be recorded.

Object of Section 306 Criminal Procedure Code, 1973 is to allow pardon to be tendered in cases where a grave offence is alleged to have been committed by several persons so that, with the aid of the evidence of the person pardoned, the offence can be brought home to the rest.⁶⁶

Pardon is tendered to those who are concerned with commission of crime⁶⁷ and Session Judge has power to grant pardon after commitment.⁶⁸

On the subject of the credibility of the testimony of an accomplice, the proposition that an accomplice must be corroborated does not mean that there must be cumulative or independent testimony to the same facts to which he has testified. At the same time the presumption available under Section 114 of the Evidence Act is of significance. It says that the Court may presume that an accomplice is unworthy of credit unless he is corroborated in "material particulars". Evidence must be justified by

64 AIR 2001 SC 2734

65 2002 Cr LJ 2990

66 Dipesh Chandak v. Union of India, 2002 (2) BLJ 25; Phulan Shah v. State of U.P. 2002 All LJ 151
Senthamarai v. S. Krishnaraj, 2002 MLJ (Cri) 280

67 Rakesh Kr. Singh v. State of Assam (2003) 2 Gau LT 126 (Gauhati DB)

68 Raj Ambrish Sen v. State of West Bengal (2002) 4 CHN 443.

corroborative evidence.⁶⁹

It cannot be contended that pardon cannot operate until the evidence has been given, by the pardoned accused.⁷⁰

Apex Court in the case of *K. Hashim v. State of Tamil Nadu*⁷¹ has observed as under: "Section 133 of the Evidence Act is also of significance. It relates to the evidence of an accomplice. In positive terms it provides that the conviction based on the evidence of an accomplice is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, because the accomplice is a competent witness."

In *Sant Lal Alias Pattar v. State of U.P.*⁷² it was held that there is no legal hurdle in acting on the testimony of an accomplice but it is well nigh settled that it would be imprudent to base conviction on such testimony unless it is corroborated on material particulars, where the conviction of the accused is solely based on the testimony of accomplice, it has to pass the test of reliability and must secure adequate corroboration before the same can be acted upon. This, the law is not that the evidence of an accomplice deserves outright rejection but as a rule of prudence it is unsafe to place reliance on the uncorroborated testimony of an approver. Accomplice must pass two test so as to prove his credibility in the court namely, that the story he relates involving him in the crime is intrinsically probable and probable catalogue of events that had taken place.

Word accomplice means that the person who seeks pardon, or for

69 Senthamarai v. S. Krishnaraj 2002 MLJ Cri 280.

70 Dipesh Chandak v. Union of India (2004) 8 SCC 511.

71 2005 (52) ACC 802.

72 Criminal Misc. Writ Petition No. 7291 of 2005.

whom pardon is sought has been an associate connected with the offence.
*State of Rajasthan & Ors Vs Ram Nivas & Anr.*⁷³

When approver is suppressing material facts and giving false evidence, he can be tried for the offence in respect of which he had been given pardon. Despite this if public prosecutor does not take steps to proceed against approver in case he is willfully suppressing material facts or is giving false evidence.⁷⁴

An accomplice's evidence is looked upon with suspicion because to protect himself he may be inclined to implicate the co-accused so it would not be safe to maintain the conviction of the appellant.⁷⁵

*"An evidence of an accomplice need not necessarily be rejected, that the evidence requires corroboration in material particulars as well as the corroboration of the evidence connecting or tend to connect the accused with the crime, that such accomplice witness is reliable."*⁷⁶

In *Dimple Gupta (minor) v. Rajiv Gupta*⁷⁷ it was held that if the statement is in the nature of accomplice evidence, it is liable to be corroborated by other evidence.

It was held in *Sitaram Sao @ Mungeri V. State of Jhankhand*⁷⁸ that if complete corroboration is given then there is no ground of disbelieving him and punishment can be given on such evidence.

73 2006 (4) Criminal Court Cases 500 (Rajasthan) (DB).

74 (Renuka Bai & Rinku @ Ratan & Anr. Vs State of Maharashtra) 2006 (4) Criminal Court Cases 329 (S.C.)

75 Francis Stanly @ Stalin Appellant Vs. Intelligence Officer, Narcotic Control Bureau, Thiruvananthapuram 2006 SCCL COM 1031.

76 (2008) 1 MLJ 26 (Mad)

77 AIR 2008 SC 239.

78 AIR 2008 SC 391.

With the complexities of criminal law in present era the special provisions regarding the confession of co-accused recorded by the police officer under the Rules 15 of TADA. (Terrorist and Disruptive Activities (Prevention) Act 1987. The Supreme Court, in, *Mohamed Amin @ Amin Choteli Rahim Miyan Shaik &Anr. Vs. CBI through its Director*. Criminal Appeal No. 473 of 2007, in their judgment dated November 18, 2008 held confessional statements of co-accused could be read against them as well as against other co-accused. In this judgment Supreme Court held that whenever an accused challenges that his confessional statement is not voluntary, the initial burden is on the prosecution for it has to prove that all requirements under the TADA Act and Rules have been complied with. Once this is done the prosecution discharges its initial burden and then the burden shifts on the accused person, then it is for him to prove through facts that the confessional statement was not made voluntarily, if such fact was pleaded and brought on record during trial the court must test its veracity, whether such fact constitutes to be such as to make his confessional statement not voluntarily made."

This view was upheld further in *Mohd Farooq Abdul Gafur and another Vs. St of Maharastra*⁷⁹ and also in *Abu Salem Abdul Qayoom Ansari Vs State of Maharastra and another*.⁸⁰

Going through the recent judgments of various high courts in India, where relieng on the principals laid down by the Supreme Court in various cases any uniform deciding line can not be traced since depending on the

79 2009 (12) SCR 1093.

80 Decided on Sept 10, 2010 Criminal Appeal No. 990 of 2006.

facts and circumstances of each case there still exist both views as to the need of corroboration and extent of such corroboration.

In case of *Dinesh Das and others Vs state of Haryana*.⁸¹ the Punjab and Haryana High Court held Accomplice is a competent witness and conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Thus under Section 133, which lays down a rule of law an accomplice is a competent witness and the conviction based solely on his uncorroborated evidence, is not illegal although in view of Section 114 illustration (b), the Courts do not, as a matter of practice do so, and look for corroboration, in material particulars. This is the conjoint effect of Sections 133 and 114 illustration (b).

Further in *Abdul Mateen & etc V. State of Rajasthan*⁸² High Court (Jaipur Bench) held that in every case corroboration of the statement of Approves is not necessary and where there is some corroboration is available conviction of the basis of approvers statement is not illegal.

However in the case of *Mohammad Afzal Bhat V. St of J&K*.⁸³ Jammu and Kashmir High Court held that "Testimony of Witness who acted as a mediator and whose role has been that of accomplice cannot be acted upon in absence of proper corroboration and conviction of accused is not proper.

81 (2009) Cr.LJ 1035.

82 2009 Cr.L.J. 2376.

83 2009 Cr.L.J. 1209

Similarly in *Chandrabhan Kardam V. State of Madhya Pradesh*⁸⁴ Madhya Pradesh High Court held in cases against the corruption under Prevention of Corruption Act (49 of 1988). The status of complainant in the eye of the law is that of an accomplice, but the conviction cannot be said to be illegal because it proceeds upon the uncorroborated testimony of an accomplice, if his evidence is otherwise found to be clear, cogent and trustworthy. The opening words of Section 133 of the Evidence Act are that an accomplice is a competent witness, which would mean that conviction can be based on its sole testimony provided his evidence is trustworthy. However, illustration (b) to Section 114 of the Evidence Act says that the evidence of an accomplice is not worthy of credit unless it is corroborated in material particulars. If we keep both these provisions in juxtaposition to each other and on reading these provisions conjointly, we find that corroboration of the evidence of an accomplice is the rule of prudence and it is universally followed and, therefore, from the beginning the law has been developed that it is always unsafe to act upon the solitary testimony of an accomplice unless it is corroborated in material terms so as to implicate the accused. Thus, in order to reach any conclusion it is on the safer side to have corroboration of the evidence of an accomplice.

On the point of competency of an approver in case of *Prakash alias Ajayan & etc. V. State of Kerala*⁸⁵, the Kerala High Court held that mere fact that approves is suffering from epilepsy does not makes a ground to reject his evidence. Held Even a person who has epileptic attack on certain

84 2010 Cr.L.J. 3128

85 2009 Cr. L.J. 2930.

occasions could not be termed as a person to whom tender of pardon under Section 306 cannot be made. The purpose of Section 306 is to obtain evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence so as to prevent the escape of the offenders from punishment for heinous offence for want to evidence. A person suffering from epilepsy cannot be termed as a person incapable of being tendered pardon and a person incapable of giving a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence as contemplated under Section 306 of the Code of Criminal Procedure.

"Section 118 of the Evidence Act applies in the matter of considering the question of tendering of pardon under Section 306 of the Code of Criminal Procedure. Section 315 of the Code of Criminal Procedure which provides that any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath, would also fortify this conclusion."

In recent judgments in case of *Mohan Chand Vs. State of Uttra Khand*⁸⁶ the evidence of approver with corroboration was relied upon for conviction. Similar view as expressed in *Santosh Kumar Satish Bhushan Bariyar Vs. st. of Maharashtra*⁸⁷ with *state of Maharashtra Vs. Sanjeev Kumar Mahendra Prasad Roy and another.*⁸⁸ The earlier view were

86 Criminal appeal No. 140 of 2009 decided on 23 Jan, 2009.

87 Criminal Appeal No. 1478 of 2005 decided on 13 May 2009.

88 Criminal Appeal No. 452 of 2006 decided on May 13, 2009.

retraced and followed. The view on admissibility and reliability of accomplice evidence were clear that with independent corroboration the evidence of an accomplice was held to be reliable and conviction held on such evidence were up held as proper.

In recent case of *State of Maharashtra Vs Abu Salem Abdul Qayyum Ansari and others*⁸⁹. Supreme Court decided on the question that whether accused has a right to cross-examine an approver whose pardon has been withdrawn. In this case Supreme Court Held that-

"An accomplice who has been granted pardon under Section 306 or 307 CrPC gets protection from prosecution. When he is called as a witness for the prosecution, he must comply with the condition of making a full and true disclosure of the whole of the circumstances within his knowledge concerning the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and if he suppresses anything material and essential within his knowledge concerning the commission of crime or fails or refuses to comply with the condition on which the tender was made and the Public Prosecutor gives his certificate under Section 308 CrPC to that effect, the protection given to him is lifted.

The legal position that flows from the provisions contained in Sections 306, 307 and 308 CrPC is that once an accomplice is granted pardon, he stands discharged as an accused and becomes witness for the prosecution. As a necessary corollary, once the pardon is withdrawn or forfeited on the certificate given by the Public Prosecutor that such person

⁸⁹ (2010) 3 Supreme Court cases (cri) 1243.

has failed to comply with the condition on which the tender was made, he is reverted to the position of an accused and liable to be tried separately and the evidence given by him, if any, has to be ignored in toto and does not remain legal evidence for consideration in the trial against the co-accused, albeit such evidence may be used against him in the separate trial where he gets an opportunity to show that he complied with the condition of pardon.

The Evidence Act, CrPC and the Constitution do not bar the proposition that a pardon granted to an accomplice under Section 306 or 307 CrPC protects him from prosecution and he becomes witness for the prosecution but on forfeiture of such pardon, he is relegated to the position of an accused and his evidence is rendered useless for the purposes of the trial of the co-accused. He cannot be compelled to be a witness. There is no question of such person being further examined for the prosecution and, therefore, no occasion arises for the defence to cross-examine him.

Thus it was held that in such case the approver whose pardon has been withdrawn can not be termed at par with hostile witness.

Thus the settled law is that an approver is a competent witness against the accused person. But the court, to satisfy its conscience, insists as caution and prudence to seek, as a rule, corroboration to the evidence of the approver, a *particeps criminis* from independent evidence ocular or circumstantial, of general particulars regarding the story spoken off by the approver of the commission of the crime and the part played by the accused therein to find whether it is true and worthy of acceptance. The

reliability of the evidence of an approver should be considered from totality of the facts and circumstances.

Law enunciated by Supreme Court regarding evidentiary value of accomplice is thus summed up as:-

- i) There should be corroboration in material particulars of Approver's statement, as he is considered as a self-confessed traitor.
- ii) Combined effect of Sections 113 and 114 Illustration (b) of Evidence Act was that an accomplice is competent to give evidence, but it would be unsafe to convict the accused upon his testimony alone. Though conviction on testimony of an accomplice cannot be said to be illegal.
- iii) Conviction on uncorroborated testimony of accomplice is not illegal, but corroboration may be dispensed with only if peculiar circumstances of case make it safe to dispense with it.
- iv) The branch of law relating to evidence of accomplice was the same in India as in England.
- v) Testimony of an accomplice is evidence under Section 3 of Evidence Act and has to be dealt with as such - The evidence is of tainted character and as such is very weak, but nevertheless, it is evidence and may be acted upon, subject to the requirement that it is corroborated in material particulars.
- vi) Once evidence of Approver is held to be trustworthy, it must be

shown that story given by Approver must implicate him in such a manner as to give rise to conclusion of guilty beyond reasonable doubt- Insistence upon corroboration is based on the rule of caution and not merely a rule of law.

- vii) For corroborative evidence, court must look at the broad spectrum of Approver's version and then find out whether there is other evidence to corroborate and lend assurance to that version.

Thus since the statute permits the conviction of an accused person on the basis of uncorroborated testimony of an accomplice but the rule of prudence strikes a note of warning cautioning the court that an accomplice does not generally deserve to be believed unless corroborated in material particulars.

Now with the rise of new complicities in crimes and enactment of new special Acts which deal with the complex situations of modern societies there is a shift towards the acceptance of accomplice evidence and even if the confession of co-accused is found to be trust worthy and legally sound then that evidence may be acted upon even without corroboration and conviction may be founded on such a witness provided the prosecution is able to remove the cloud of suspicion attached to such evidence.

* * * * *