

CHAPTER-II

ACCOMPLICE-CONCEPT OF THE TERM

An accomplice is someone who intentionally helps another in committing a crime. At common law, this type of activity is usually described as aiding and abetting or encouraging, procuring, soliciting, or advising the commission of the crime.

(1) Who is an Accomplice ?

The term 'accomplice' is not defined in the Evidence Act or the Criminal Procedure Code or in any Statute or the Indian Acts so it has to be presumed that it has been used in the Indian Evidence Act in its ordinary sense, or in other words according to the Dictionary meaning thereof. The meaning of the words is thus given in Wharton's Law Lexicon: *Accomplice (fr. complice, Fr. complex, Lat., bound up with one in a project, but always in a bad sense), one concerned with another or others in the commission of a crime*¹.

As stated by Maule, J. in *R.V. Mullins*² that an accomplice is one who has concurred in the commission of an offence. It signifies a guilty associate or partner in crime. In *United States v. Neverson, Centruy Digest, Vol. 14, Col.*, it was said that who in some way or other is connected with the offence in questions, or who makes admission of facts showing that he

¹ Hawk PC 87.

² Cox C. 756.

had a conscious hand in the commission of the offence³ or when the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused, he is an accomplice⁴. This definition is based on *U.S.v. Neverson*⁵, which was also relied on in *Kailash v. R.*⁶. The words "partner" and "associate" have their apparent connotation. Obviously, when bribe is extorted and the giver is not a willing participant but a victim, he cannot be possibly described as an accomplice for he is neither a partner nor an associate in the crime committed by the bribe taker. Actually, he resisted the illegal gratification demanded from him but could not ultimately stand the pressure put on him.

An accomplice, by long legal tradition, is a notoriously infamous witness, one who being *particeps criminis*, purchases his immunity by accepting to accuse others⁷.

The primary meaning of accomplice is any party to the crime charged and some one who aids and abets the commission of crime⁸.

The New Oxford Dictionary says that "*accomplice*" may be spelt as "*a complice*", meaning a partner in crime, an associate in guilt⁹.

"The expression accomplice" has not been defined in the Evidence Act, but there can be little doubt that it means a person who knowingly or

³ *Jagannath v. R.* 17 Luck 516: A1942 O 221: R.v. Burn 11 Bom LR 1153: 10 Cr LJ 530; *Yacoob v. Emperor* AIR 1933 Rang. 199; *R. v. Ghulam Rasul.* A1950 L 129;

⁴ Per SUBRAMANIA AYYAR, J in *Ramasami v. R.*, 27 M.

⁵ *Century Dig Col 1279* and *White v Com* 14 *Century Dig Col 1280*.

⁶ AIR 1942 Oudh 221

⁷ *Balwant Kaur v. Union Territory of Chandigarh* AIR 1988 SC 139 at p. 142.

⁸ *Sheshanna Bhumanna Yadav v. State of Maharashtra*, AIR 1970 SC 1330 at p. 1332.

⁹ *Kailash Missir v Emperor* AIR 1931 Pat 105 at P. 109.

voluntarily co-operates with or aids and assists another in the commission of a crime."

Accomplices are usually interested and always infamous witness and whose testimony is admitted from necessity, it being often impossible without having recourse to such evidence, to bring the principal offenders to justice¹⁰.

An accomplice witness is one who is either being jointly tried for the same offence and makes admission which may be taken as evidence against a co-prisoner and which makes the confessing accused pro hac vice, a sort of witness, one who has received conditional pardon on the understanding that he is to tell all he knows and who may at time be regulated to the dock if he fails in his understanding¹¹.

Thus, a particeps criminis in respect of the actual crime charged is an accomplice¹², all persons who have been concerned in the commission of crime, all participes criminis whether they are considered in strict legal propriety as principals in the first degree or second degree or merely as accessories before or after the fact¹³.

As defined in Sect 133 of the Indian evidence Acts 'accomplice' be explained on the basis of following principle which was laid down by apex court in *R.K. Dalmia Vs. Delhi Administration*¹⁴. In this case Hon'ble Supreme Court observed that-

¹⁰ Taylor on Evidence Sec. 967.

¹¹ Per Glover, J in *R.V. Ramsoday Chuckerbutty* (1873) 20 WR (Cr) 19.

¹² *Mohd. Husain Umar Kochra v. K.S. Dalipsingh ji*, AIR 1970 SC 45 at p. 55 *Davis v. Director of public prosecution* 1954 AC 378 at pp. 400-402.

¹³ (Fost Cr Las 341).

¹⁴ AIR 1962 S.C. 1821 Para 141.

"An accomplice is a person who- participates in the commission of the actual crime charged against an accused. He is to be *particeps criminis*. There are two cases however, in which a person has been held to be an accomplice even if he is not *particeps criminis*; Receivers of stolen property are taken to be accomplices of the thieves, from whom they receive goods, on a trial of theft. Accomplices in previous similar offences committed by the accused on trial deemed to be accomplices in the offence for which the accused is on trial, when evidence of the accused having committed crimes of identical type on other occasions be admissible to prove the system and intent of the accused in committing the offence charged".

An indication of the meaning of the word accomplice may be found in Criminal Procedure Code¹⁵, which occurs, in the marginal note of Section 337, Criminal Procedure Code (now section 306 of the Code of Criminal Procedure, 1973). Taking the language used in the body of Section 337 (now Section 306 of the Code of Criminal Procedure, 1973), it seems that the word indicates a person directly or indirectly concerned in, or privy to the offence. His hands like the accused person are also besmeared with guilt. The connection which the accomplice bears to the crime fixes his culpability & warrants his joint trial with the other accused persons¹⁶.

Accomplice means a person who knowingly or voluntarily co-operates with or aids and assists another in the commission of crime. The

¹⁵ [per Newbould J in *Suryakanto v. R.* CWN 119]

¹⁶ (Dr. Jagannanda Rao).

expression obviously include principals in the first and second degree. "The mere fact, that one had knowledge that a crime had been committed or that he concealed or failed to disclose such knowledge, does not render him an accomplice. If, for example, the concealment is due to the witness's anxiety for his own safety rather than to any desire to shield the criminal, he would not be an accomplice. Nor would a person who remains passively silent after obtaining knowledge of the commission of the crime be an accessory or accomplice within the rule as to the testimony of accomplices. To render a person an accomplice his participation in the crime must be criminally corrupt¹⁷.

An accomplice means a guilty associate or partner in a crime, a person participating in the crime or one concerned in the commission of the crime.

"A person's knowledge of the deliberations in the course of which the dacoity was planned, his having seen the accused departing for a particular purpose or his having accompanied the accused when the latter went for disposal of the stolen articles cannot be said to be an accomplice and his evidence does not require corroboration on material particulars¹⁸".

After reviewing the above mentioned material it can be said that the term "accomplice" includes the following persons, who are called as witnesses for the prosecution and thus fall within the category of accomplice:

¹⁷ AIR 1947 Lah 220.

¹⁸ K.S. Nirmal vs State, AIR 1954 P. 55.

- (i) An accomplice means a guilty associate or partner in a crime-A person who is connected with the offence or who makes admission of facts showing that he had a conscious hand in it.

Where a witness is not concerned with the commission of the crime he cannot be said to be an accomplice although he gives no information about it until the arrival of the Police owing to fear of the accused.

In a case where husband is charged with having committed sodomy and making wife to masturbate him, it was held that wife was not a consenting party but was compelled to these acts and thus she was not an accomplice. An accomplice means a guilty associate or partner in a crime, a person participating in the crime or one concerned in the commission of the crime.

For example, in a case of murder, the witness present when accused dragged body to pit after murder and the witness disclosed murder, it was held that the witness was not an accomplice in the crime of which the accused was charged as he had not been concerned in the perpetration of the murder and his evidence need not be corroborated.

- (ii) Accomplices are those who are in some way or other connected with the offence in question.
- (iii) On any view, persons who are *particeps criminis* in respect of the actual crime charged, whether as principals or accessories before or after the act (in felonies) or persons committing procuring or aiding and abetting (in the case of misdemeanours). This is surely the

natural and primary meaning of the term accomplice but in two cases persons falling strictly outside the ambit of this category have, in particular decisions, been held to be accomplices for the thieves from whom they received goods on a trial of the later for larceny.

- (iv) When X has been charged with a specific offence on a particular occasion and evidence is admissible and has been admitted of his having committed crimes of this identical type on other occasions, as proving system and intent and negating accident; in such cases the Court has held that, in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other parties should not be left to the jury without a warning that it is dangerous to accept it without corroboration.

In order that a person may be treated as an accomplice it must be established that he has assisted the accused in the commission of the offence charged. The fact that the witnesses committed similar offences does not justify the contention that they are accomplices.

- (v) The word accomplice is inter-changeable with an associate in crime who is consciously so connected with the criminal act done by his confederate, that he on account of the presence of the necessary 'mens rea' and his participation in the crime in some way or the other, can be tried along with the confederate actually perpetrating the crime. Witness who could not be so indicted as the element of mens rea was entirely absent cannot be held to be accomplice.

- (vi) Although the expression accomplice has not been defined in the Evidence Act, there can be no doubt that it means a person who knowingly or voluntarily co-operates with or aids and assists another in the commission of a crime. The expression obviously includes principals in the first and second degree.
- (vii) An accomplice is one who is an active participant in the commission of the crime. The fact that a person is passively helping another to commit a crime or having been present when the crime was committed does not inform the police, or for the matter of fact where a person helps the criminal in disposing of the murdered body or concealing it, would not make him an accomplice. One has to take into consideration the nature and extent of his participation in the crime. If the court finds that his act is such as to render it probable that he himself would have been charged for the offence, and then his evidence is absolutely of no value. Similarly, the widow of the accused could not be treated as an accomplice as she stated that she helped the accused to dispose of the body as the accused threatened to kill if she did not help him.

Also, one who deposes that he only helped the accused in disposing of the body of the deceased after he was killed by the accused is not an accomplice.

- (viii) Whether a witness is or is not an accomplice depends upon the facts in each considered in connection with the nature of the crime. Persons to be accomplices must participate in the commission of the

same crime as the accused persons in a trial are charged. If the evidence of a witness falls short of these tests, he is not an accomplice, and his testimony must be judged on principles applicable to ordinary witnesses. Persons being in position of submission when joined under pressure to commit an offence cannot be said to sustain such a relation to the criminal act that they could be jointly indicted with the principal offenders and therefore, not being guilty associates with crime, they could not be accomplices.

- (ix) Accomplice includes one who poses as accomplice and his evidence requires corroboration.
- (x) An accomplice confesses himself a criminal and may have a motive for giving information as it may purchase immunity for his offence.
- (xi) For establishing the charge of conspiracy having for its object the subversion of British rule in India by armed revolt, evidence has to be taken of persons who may have knowledge of secret organizations but who have not taken part in the perpetration of a crime, persons to whom overt acts can be attributed. It would not be right to regard a person who is cognizant of a crime or who has made an attempt to prevent it or who did not disclose its commission as an accomplice and to apply to his case the same rule as applies to accomplices. The function of the court is to ascertain what is the degree of credit to be attached to the evidence coming from witness of the above description, regard being had to all the circumstances

and facts for the case and not to class such witnesses as accomplices or practically accomplices.

- (xii) The word accomplice is made at times to bear, improperly a larger meaning than is allowable. An accomplice confesses himself a criminal. No man ought to be treated as an accomplice on mere suspicion unless he confesses that he had a conscious hand in the crime or he makes admission of fact showing that he had such hand. If the evidence of a witness falls short of these tests he is not an accomplice and his testimony must be judged on principles applicable to ordinary witnesses.
- (xiii) Person consenting to offence is accomplice and his evidence must be corroborated in material particulars. Similarly, when the woman is cognizant of intention of her paramour of killing her husband and she did not disclose it to her husband, her testimony is considered of no higher value than that of accomplice. Similarly where the wife is the consenting party of husband's murder, she is in position of accomplice and her evidence also cannot be accepted without independent corroboration.
- (xiv) Person keeping watch to see whether police were approaching is accomplice.
- (xv) A person who has knowledge of the commission of an offence but keeps quiet for some days is no better than an accomplice.

- (xvi) Persons who witnessed crime, gave no information to police but assisted in concealing it are accomplices.
- (xvii) Where the witness though did not actually help the accused in committing the crime, but helped him in keeping his position concealed, was in no better position than that of an accomplice and it is highly unsafe to use such a man's evidence against him without any material corroboration.
- (xviii) In a case where petition was for restitution of conjugal rights, wife was pleading cruelty and adultery and the evidence of P who was the mistress of the husband was taken. There was no other evidence. Held that the witness was an accomplice in the offence and her evidence was not sufficient in law and there should be some corroboration¹⁹.
- (xix) Where it is found as a fact that the complainant was a consenting party to the accused committing unnatural offence upon him, the complainant must be regarded as an accomplice. In such circumstances it would be unsafe to convict the accused on the basis of his evidence unless corroborated in material particulars implicating the accused.
- (xx) A married woman who consents to her husband's committing an unnatural offence with her is an accomplice in the felony and as such, her evidence requires confirmation, although consent or non-

¹⁹ *Simmons vs. Simmons* 1 Rob Ecc. 566- (1847). 163ER 1137 (1142).

consent is quite immaterial to the offence as per the decision of *R. v. Jellyman*²⁰.

- (xxi) To render wife of deceased an accomplice, there should be evidence to show that she shared with accused such intention that deceased should be killed.
- (xxii) A person who knowingly aids in the disposal of stolen property is an accomplice. Similarly where a person not actually participating in theft but only accepting the property stolen is an accomplice only by implication or in a secondary sense and his evidence does not require the same amount of corroboration as that of a person actually concerned in the crime; sufficiency or otherwise of the corroboration is to be judged by the circumstances of the particular case.
- (xxiii) A person employed by another person at night to remove foodgrains from bags lying a Government godown and substitute dust in their place is an accomplice of the employer.

An accomplice is a person who voluntarily participates in the commission of the crime along with other. He is therefore, guilty of the crime along with the other accused persons. The accomplice might not be an accused in the case, but it is still a fact that he was an accomplice in the crime. In the case of a prosecutrix for rape she is a victim of the offence and not an offender. The case of an accomplice, therefore, materially differs from that of a prosecutrix for rape and the evidence of both cannot

²⁰ Car. & P. 604 = (1838) 173 ER (637).

be placed on the same footing. And hence in law, the evidence of the prosecutrix does not require corroboration like that of an accomplice.

Hence, the rule of prudence requires that evidence of a prosecutrix in a rape case must be corroborated in material particulars by independent testimony connecting the accused with the crime and he further states that the previous statement of the prosecutrix is not the kind of corroboration sought in such cases. Each case depends upon its facts and of after taking all the circumstances into consideration the evidence of the prosecutrix could be believed then the accused could be convicted on her evidence alone, although there is no corroboration in independent testimony connecting the accused with the crime. It is a very well settled rule of practice in our country, following the English rule that the evidence of the complainant must be corroborated in rape cases and the nature of corroboration depends on the facts of each case. Hence, in rape cases, the conduct of the complainant becomes very important and whether she makes a charge promptly or not is always relevant. Therefore, in crimes involving sexual offences, mostly the victim is not considered an accomplice and the provisions of law regarding an accomplice are not attached to the victim. And in any case, if the person in question is declared as an accomplice, then the testimony of such a person shall have to be corroborated, but it is also possible that the conviction of the accused was based on the uncorroborated evidence of the accomplice and this is what brings along with it a risk that the accomplice might be trying to

escape liability by cooking up a story such that the Court might convict the accused and forget about the accomplice.

(2) What is the Liability of Accomplices ?

Generally, one who is found to be an accomplice is deemed liable for the crimes committed by the primary party. Some courts even consider accomplices liable for other crimes that are a "natural and probable consequence" of the crime that the accomplice aided or abetted.

There are three elements to accomplice liability:-

- (1) Proof that someone committed the underlying crime-- it is not necessary, however, for the government to have tried and convicted somebody, or even that the principal is identified; proof in this sense means probable cause that a crime was committed.
- (2) Actus reus-- accomplice law eases the requirement of proving actus reus, but it does so with hard-to-define words. Words such as "aid", "abet", "counsel", "induce" or "incite" may have different meanings depending upon what jurisdiction you are in. Normally, you can't be considered as an accomplice simply for being there. You must be constructively present. This is known as the Mere Presence rule, but there are exceptions in places with Good Samaritan laws where you can be tried as an accomplice for just standing there and watching someone get beaten.

Case law has ruled the following are example of accomplice actus reus:

- acting as a lookout
 - providing guns, supplies, or instruments of crime (even under color of financial transaction if seller is aware of purpose)
 - driving a getaway vehicle
 - sending the victim to the principal
 - preventing warnings from reaching the victim (but not merely failing to disclose the occurrence of a crime to authorities).
- (3) means rea-- this is the element that it all boils down to in obtaining a conviction for being an accomplice. All the words used in accomplice law ("abet" for example) carry an implication of purposive attitude toward the crime. Other courts have held to a less strict standard than "purposively" (even though the MPC recommends this only) such as "knowingly" but still other courts have allowed "recklessly".

Case law has ruled the following are example of accomplice means rea:

- an intent that the crime be committed to the commission desire to see it done.
- knowledge that they are contributing to the commission of a crime, knowing that the outcome would have a dangerous result or criminal consequences

- recklessness and negligence under such circumstances as to indirectly benefit or share in the financial proceeds of the crime; a "stake" in the outcome.

(3) What Makes a Person an Accomplice?

There are four different categories of accomplices, based on the level of participation.

- (i) **Principal in the first degree** This person either physically commits the crime or commits it by use of an innocent instrumentality or human agent.
- (ii) **Principal in the second degree** Such an accomplice intentionally helps another commit a crime while in the presence of the principal in the first degree (i.e. a "lookout").
- (iii) **Accessories before the fact.-** An accessory before the fact is one who counsels, connives at, encourages or procures the commission of the crime. Of these persons, those who counsel, incite, encourage or procure who do nothing but only connive at are not necessarily accomplices. All accessories before the fact, if they participate in the preparation for the crime are accomplices but if their participation is limited to the knowledge that a crime is to be committed they are not accomplices. Persons to be accomplices, must participate in the commission of the same crime as the accused persons in a trial are charged²¹.

²¹ AIR 1942 Oudh 221.

Accomplices in the previous similar offence committed by the accused on trial are deemed to be accomplices in the offence, for which the accused is on trial, when the evidence of the accused having committed crimes of identical type on other occasions be admissible to prove the system and the intent of the accused in committing the offence charged²².

Such an accomplice is not present at the scene of the crime, but does solicit or command the principal in the first degree to commit the crime.

(iv) **Accessories after the fact.**- Accessories after the fact are also accomplices. *Mahadeo v. The King, AIR 1936 PC 242*. Every person is an accessory after the fact to a felony, who knowing that a felony has been committed by another person receives, relieves, comforts or assists him in order to enable him to escape from punishment, or rescues him from arrest; or having him in custody for felony, intentionally and voluntarily allows him to escape, or opposes his arrest. Three conditions must unite to render one an accessory after the fact (1) the felony must be complete (2) the accessory must have the knowledge that the felony has been committed; and (3) the accessory must harbour or assist the principal felony²³.

Such an accomplice intentionally helps a guilty party to avoid arrest, trial, or conviction. The accessory after the fact provides aid after the crime is already committed.

²² AIR 1962 S.C. 1821 : (1963) 1 SCR 253.

²³ AIR 1960 Pat. 459.

Under accomplice liability principal in the second degree and an accessory before the fact are just as liable for the crimes committed as the principal in the first degree. However, today most jurisdiction view accessory after the fact as a separate and less serious offence than the crime committed by the principal in the first degree.

(4) Defence to the Crime being an Accomplice:-

There are three ways to offer a defence to the crime of being an accomplice:

- (1) Mistake of fact-- this is not same as "I didn't know it was a crime" (mistake of law) but a mistake of fact, good faith claim, because of the way a person perceives the world and makes reasoned judgments.
- (2) Abandonment-- the complicity was abandoned in a timely manner; the accomplice terminated their participation either completely or in part such as to deprive the principal of effectiveness at committing the crime. "I didn't help so they could get caught and learn their lesson".
- (3) Withdrawal-- the complicity was repudiated voluntarily (not merely because of a fear of getting caught); "I didn't help because it was wrong"; some attempts are made to neutralize or thwart the crime such as by notifying authorities.

(5) Burden of proving that a witness is an Accomplice:-

The question whether a witness is or is not an accomplice is a question for the jury to determine, and it would amount to a misdirection

on the part of the Judge to say that a witness is not an accomplice. This view is supported by a decision of the Calcutta High Court reported in *E. St. C. Moss v Emperor*²⁴, where it was held that-

"In any jury trial where the facts and circumstances of the case raised a sufficient suspicion that a certain person had something to do with the transaction concerning the offence, it is necessary for the Judge to have it put to the jury to consider whether such person is or is not an accomplice."

Whether a Person is or is not an accomplice depends upon the facts in each particular case considered in connection with the nature of the crime, and persons to be accomplices must participate in the commission of the same crime as the accused persons in a trial are charged. If the evidence of a witness falls short of these tests, he is not an accomplice, and his testimony must be judged on principles applicable to ordinary witnesses. Where a witness is not concerned with the commission of the crime for which the accused is charged, he cannot be said to be an accomplice in the crime. Persons coming technically within the category of accomplices cannot be treated on precisely the same footing. The burden of proving that a witness is an accomplice ordinarily is upon the body alleging it, namely the accused, though it is the duty of the prosecution to bring the accomplice character of the evidence to the notice of the Court²⁵.

(6) Approver's Evidence:-

²⁴ 100, I.C. 358 : 1927 Cal. 460.

²⁵ AIR 1942 Oadh 221 at PP. 223-24.

Approver meaning- He is an accomplice in crime who accuses others of the same offence, and is admitted as a witness at the discretion of the court to give evidence against his companions in guilt. Anciently it means one who, when indicted and are arraigned for treason or felony, confessed, before pleading, the charge against him took an oath to reveal all treasons and felonies within his knowledge, and accused his accomplices. No one could be an approver who was attainted or incapable of taking an oath²⁶.

An approver is a most unworthy friend if at all and he having bargained for his immunity, must prove his worthiness for credibility in the court. The approver's evidence must show that he is a reliable witness. This test is common to all the witnesses. If this test is fulfilled, his evidence should be corroborated in material particulars to connect each of the accused persons with the commission of the offence. If the testimony of the approver is itself uninspiring and unacceptable justifying its outright rejection, it would be futile and unnecessary to look for corroborative 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 persons with the commission of the crime charged²⁷. An approver is a most unworthy friend and he having bargained for his immunity must pass two tests in proving his credibility in court, namely, that the story he relates involves him in the crime and appears

²⁶ Jowitts Dictionary of English Law.

²⁷ State of Orissa v Bishnu Charan Muduli 1985 Cr LJ 1573 (Ori); State of Rajasthan v Teka 1978 Cr LJ (NOC) 241 (Raj) : 1977 Cr C 273.

intrinsically to be a natural and probable catalogue of events that had taken place. Secondly, the story given by the approver so far as the accused on trial is concerned must implicate him in such a manner as to give rise to a conclusion of guilt beyond doubt²⁸.

In the case of *Data Ram vs. State of Rajasthan*²⁹. The earlier view of supreme court were reviewed and following guidelines were prescribed with regards to an Approver -

1. According to, s. 133 of the Indian Evidence Act, an approver is a competent witness and conviction shall not be illegal if based upon an uncorroborated testimony of the approver;
2. According to the illustration (b) of s. 114 of the Indian Evidence Act, the court may presume that an approver is a man of untrustworthiness unless he is corroborated in material particulars;
3. Court should not ordinarily convict unless the evidence of the approver is corroborated in material particulars *qua* the accused, and if more than one, *qua* each accused;
4. Such corroboration can be direct and circumstantial;
5. If the evidence of an approver is intrinsically or inherently impossible or is otherwise unreliable or unacceptable, it should be rejected straightway without caring to seek corroboration;

²⁸ Ravinder Singh v. State of Punjab AIR 1975 SC 856; Khagendra Kahan v Stae of Orissa Cr LJ 487 (Ori); State of Orissa v Nazrul Ali Seikh 1985 Cr. LJ 1311; (1985) 1 Crimes 458; (1985) 60 Cut LT 9; (1985) 1 Ori LR 254.

²⁹ 1977 Cr LJ. 1428.

6. There are several circumstances by which the reliability of an approver has to be adjudged; one important test of reliability is that he is corroborated by other evidence in material particulars; and

7. The approver should be *particeps criminis* on his own admission or appear to be so by evidence.

When an accomplice turns to be an approver about 20 months after the offence being committed and he is sought to be corroborated by the victim (here a lady involved in cheating) who even in her F.I.R. omitted to mention the names of the accused persons despite knowing their role in the conspiracy to cheat her, conviction cannot be sustained³⁰. An approver whose earlier statement to police is not supplied and who turns an approver after a long time after the occurrence (here twenty months) is not worthy of credence³¹. Ordinarily approver's evidence is to be corroborated in material particulars bridging closely the distance between the crime and criminal, yet in rare cases conviction is not illegal merely because it proceeds on uncorroborated testimony of accomplices³². As stated by LORD REID: there is nothing technical in the idea of corroboration. When in the ordinary affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with other statements one circumstances relating to the particular matter; the better it fits in, the more one is inclined to believe it. The doubted statement is

³⁰ Lalchand v State of Haryana, AIR 1984 SC 226: 1984 Cr LJ 164: (1984) 1 SSC 686: (1984) 1 Crimes 337.

³¹ Lalchand v State of Haryana, (Ibid).

³² Ravinder v State of Haryana AIR 1975 SC 856: 1975 Cr Lj 765; Rajani Kanta v State of Orissa 1976 Cr LJ 1674.

corroborated to a greater or lesser extent by the other statements or circumstances with which it fits in³³.

Statement of approver that he did not disclose to anyone about his participation in offence before he was arrested is quite natural for he is not expected to make it public. No adverse inference from this conduct can be drawn³⁴. Approver making application for obtaining pardon three months after his arrest--no adverse inference can be drawn³⁵. Evidence of accomplice is required to be reliable and the court should also see if it has been corroborated in material particulars by other independent evidence either direct or circumstantial³⁶. Unless the evidence of approver or accomplice is found reliable, the accused cannot be convicted, whether or not he has been corroborated in material particulars³⁷. The first test of reliability of approver or accomplice evidence is for the court to be satisfied that there is nothing inherently impossible in the evidence after that corroboration becomes necessary³⁸. Approver's evidence when is exculpatory and contains intrinsic infirmities, no conviction thereon can be sustained³⁹. The nature of corroboration is that it is confirmatory evidence and it may consist of evidence of a second witness or of circumstances like the conduct of the person against whom it is required, Corroboration must connect the accused with the crime. It is not enough if a piece of evidence

³³ D.P.P. v Kilbourne 1957 Cr. App R 381 (409).

³⁴ Moti v. State of Haryana 1978 Cr LJ (NOC) 186 (Puni).

³⁵ Moti v State of Haryana (Ibid).

³⁶ Tribhuban Nath v State of Maharashtra AIR 1973 SC 450; 1972 Cr. LJ 1277 : 1972 SCD 571; 1972 Cr App R 257 (SC):

³⁷ State of Kerala v Thomas Cherian 1982 Cr LJ 2303; Krishinlal v State of W.B. 1982 Cr LJ 1305 (Cal).

³⁸ SarwanSingh v State of Punjab 1975 Cr LJ 1014; AIR 1957 SC 637; Lachiram v State of Punjab 1967 Cr LJ 671; AIR 1967 SC 792.

³⁹ Jaga Gola v State of Gujarat AIR 1982 SC 1227: 1982 Cr LJ 1579; 1982 SCC (Cr) 141.

tends to confirm the truth of a part of the testimony to be corroborated⁴⁰. When approver's evidence is adequately corroborated conviction in murder case can be given. But so far as approver's evidence is concerned there is always a tendency to minimise one's own part and shift and assign the dominant role in the commission of the offence to accused. There death sentence may be reduced to life sentences⁴¹.

The reasons for taking usually precautions before accepting the evidence of an approver are not far to seek. An approver is an accused converted as a prosecution witness. In order to escape the possible consequences of the charges against him he is one likely to swear falsely. He is an immoral person having participated in the crime. Consequently he cannot have much regard for the sanction of oath. The thought of pardon always makes him lean towards the prosecution. His inclination is always to make his own share in the transaction as slight as possible and to place the serious blame on others. If there is other independent evidence about the crime the testimony of an accomplice is superfluous. Therefore in practice police usually invites a party to become an approver only after they have failed in every other way to supply the missing links. For all these reasons an approver is a suspect witness and his evidence can be accepted only if it is materially corroborated⁴².

In view of this inclination of an approver the Supreme Court has impressed upon the need of court's being satisfied about the approver's

⁴⁰ Bhumanna v State AIR 1970 SC 1330: 1970 Cr LJ 1158: (1971) 1 SCJ 556: (1971) 1 Mad LJ (Cr) 274: (1971) 1 SCR 617: 73 Bom LR 806.

⁴¹ Subramaniam v State of Tamil Nadu AIR 1975 SC 139: 1975 Cr LJ 226: 1975 SCC (Cr) 40: (1975) 3 SCC 414.

⁴² 1969 Cr LJ 1577 (Ker)

truthfulness The Supreme Court lays down that unless he is found to be a reliable witness the worth of his evidence is lost and even by seeking corroboration such evidence cannot be the foundation for conviction⁴³.

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⁴³ 1986 CrLJ 1072 (S.C.)