CHAPTER-III

CASES AND STAGES IN WHICH THE CONCEPT IS APPLICABLE

The word "accomplice" has not been defined by the Act, and should, therefore, be presumed to have been used in its ordinary sense. An accomplice means a guilty associate or partner in crime[1], a person who is believed to have participated in the offence[2], or who, is some way or other, is connected with the offence in question[3], or who makes admissions of facts showing that he had a conscious hand in the offence[4]. Where a witness is not concerned with that commission of the crime for which the accused is charged, he cannot be said to be an accomplice in the crime[5]. The word "accomplice" also includes one who poses as an accomplice[6]. A wife who is cognizant of the fact that the accused intended to kill her husband but did not disclose that fact to him, must be regarded as an accomplice[7].

Purchasers of liquor are not accomplices in prosecution for unlawfully keeping and being interested in keeping premises for sale of liquor unless they were interested in some way in keeping the premises for

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1 Jagannath v E. 1942 O 221; Ghudo v E., 1945 N 143; Ramaswami Gounden v. E. 27 M 271; Chetumai Rekumal v. E., 1934 S 185; Govinda Balaji v. E. 1936 N 245; Crown v. Ghulam Rasul, 1950 L. 129.

2 Jagannath v. E., 1942 O 221; Rustam Singh, v. E. 24 IC 146 : 15 Cr. LJ 440; E v. Percy Henry Burn, 4 IC 268 : 10 Cr LJ 530 : 11 Bom LR 1153.

3 Yacoob v. E. , 1933 R 199 : 146 IC 240 : 34 Cr. LJ 1255.

4 E.v. Percy Henry Burn. 4 IC 268 : 10 Cr LJ 580 : 11 Bom LR 1153; Crown v. Ghulam Rasul, 1950L 129.

5 Narain Chandra Biswas v. E. 1936 C 101 : 161 IC 289 ; 37 Cr LJ 445 Jagannath v. E., 1942 O 221

6 Golam Asphia. v. E. 1932 C 295 : 137 IC 497 : 33 Cr LJ 477.

7 Phullu v. E., 1936 L 731 : 164 IC 700 : 37 Cr LJ 978.

sale of liquor[8]. The maker of whisky is an accomplice of one accused of unlawfully possessing whisky for purpose of sale, to whom the whisky manufactured was delivered by the witness[9]. Agents selling whisky after they took it from defendant's room were not accomplices of his as for as unlawful possession of whisky in the room was concerned. Witness conveying whisky from defendant's car to purchaser's house and aiding purchaser in resale thereof is not accomplice in possession of liquor for sale[10]. Persons who dug up and appropriated whisky buried by one prosecuted for unlawfully possessing liquor were not defendant's accomplices[11]. Where two persons purchased liquor each paying half the price and liquor was then divided between them, each taking possession of his part, one of them was not the accomplice of the other charged with unlawful possession of liquor[12]. A labourer hired to work at a still was held not be the accomplice of the owner in the crime of possessing the still, but one who assisted about an illicit still though he had no interest in the distillery except that he wanted liquor to drink was an accomplice in the crime of operating the still and one manufacturing whisky at defendant's request with later's still, which defendant showed him how to operate is accomplice in the crime of unlawfully manufacturing liquor[13]. Wife carrying food to husband and other operating a still, and remaining with them for a time is an accomplice[14]. Persons going with those accused of unlawfully manufacturing whisky for the purpose of aiding in the

[8] Molish v. State, 102 Tex. Cr. 143, 277 S.W. 672.
[9] Cate v. State, 100 Tex. Cr. 611, 272 S.W. 210
[10] Stringer v. State 110 Tex Cr. 641, 10 S.W. 641, 10 S.W. (2d) 721.
[11] Boggs v. Commonwealth, 218 Ky. 782, 292 S.W. 324.
[12] 20. Partin v. Commonwealth, 204 Ky. 446, 264 S.W. 1061.
[13] Simms v. State, 98 Tex. Cr. 352, 265 S.W. 897.
[14] Alexander v. State, 20 Ala. App. 432, 102 So. 597.

manufacture which was temporarily abandoned for inability to start a fire were accomplices[15]. So one who sells to the operators of a still and delivers at the still supplies to be used in the operation of the still and delivers at the still supplies to be used in the operation of the still is an accomplice in the crime of unlawful operation of the still[16]. Calling minor, at request of accused, without knowledge of accused's intent to give liquor to the minor in violation of law. did not constitute one an accomplice[17]. In the absence of previous dealings between the parties in connection with the manufacture, transportation or sale of the whisky, the purchaser of intoxicating liquors are generally held no to be accomplices of one unlawfully selling the same; but there is contrary authority[18]. It has been held that a statute declaring that a purchaser, transporter or possessor of prohibited liquor is not an accomplice, in a prosecution for violating the liquor laws, being an exception to the general rule as to accomplice's testimony is to be strictly construed[19]. One accompanying person accused of unlawful sale of liquor to purchaser's residence where agreement for sale was made but who was not a party to the transaction and was not present when the whisky was delivered was not an accomplice. Witnesses appropriation of a part of money returned, by one accused of unlawful sale, to the purchaser of whisky, due to poor quality is not an accomplice in the sale[20].

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[15] Commonwealth v. Stringer, 195 Ky. 717, 243 S.W. 944.
[16] Denninson v. Commonwealth, 198 Ky. 380, 248 S.W. 880.
[17] State v. Smith, 75 Mont. 22, 241 Pac. 522.
[18] State v. Ryan, 1 Boyce (24 Del). 223, 75 Atl 869.
[19] Cate v. State, 100 Tex. Cr. 611, 272 S.W. 210.
[20] Colter v. State. 95 Tex. Cr. 657, 255 S.W. 406.

A person actually selling morphine involved in prosecution of another for the sale there of has held to be an accomplice[21]. One assisting purchaser in procuring liquor is not accomplice in crime of unlawfully selling liquor, but one who drove one accused of transporting whisky to a place to obtain whisky at accused request and who had several drinks of the whisky on the way back after it was obtained was an accomplice[22]. The seller or donor of the liquor is not an accomplice of the buyer or donee accused of transporting liquor, even though he accompanies the buyer or donee as far as the place of its concealment, the liquor remaining in the buyer's or donee's control. Nor is the purchaser of whisky, accomplice in the crime of unlawfully transporting it, if he had no control over or custody of it while defendant was transporting it[23]. But witness who asked defendant to bring liquor to the car has been held accomplice in transporting the liquor[24]. The fact that witnesses active participation ended when they carried whisky to buyer's automobile and received pay therefore did not prevent them from being accomplices to subsequent transportation[25]. Under the wording of a statute, a witness who was engaged with defendant in the enterprise of transporting liquor was held not an accomplice in a prosecution for transporting liquor[26]. In prosecution for unlawfully transporting whisky, one while riding horseback, took up another who had a small quantity of liquor in his possession to the knowledge of the witness, is not an accomplice, since he had no direct

[21] Bord vs state, 118 Tex Cr. 532, 39 S.W. 55.
[22] Ray v. Commonwealth 198 Ky. 827, 250 S.W. 114
[23] Delong v. Commonwealth 198 Ky. 316, 248 S.W. 839.
[24] Brown v. State, 38 Okla. Cr. 15, 259 Pac. 154.
[25] Fitts v. State 24 Ala. App. 405, 135 So, 654.
[26] Brock v. State. 96 Tex, Cr. 6, 255 S.W. 751

custody nor control of the whisky. A witness has been held not to be an accomplice to the crime of unlawfully manufacturing or unlawfully selling or the crime of unlawfully delivering whisky because he drank some of it[27].

An alien entering the United States unlawfully is not the accomplice of one unlawfully bringing aliens[28]. All who participate in games, the playing of which is prohibited are accomplices of each other has been both affirmed and denied[29]. Players are not accomplices of one accused of unlawfully conducting a gambling game or place[30].

Employees in bucket shop, with knowledge that orders were bucketed, were not accomplices in the crime of making unlawful contracts, where they did nothing but accept money and sign letters and checks[31].

(1) Meaning and Distinction in Accomplice, Accessories, Aiders, Abettors, Principals and Conspirators -

(i) Accomplice-

At law, an accomplice is a person who actively participates in the commission of a crime, even though they take no part in the actual criminal offense. For example, in a bank robbery, the person who points the gun at the teller and asks for the money is guilty of armed robbery. However, anyone else directly involved in the commission of the crime, such as the lookout or the getaway car driver, is an accomplice, even though in the absence of an underlying offence keeping a lookout or driving a car would not be an offense.

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[27] Butler v. State, 96 Tex, Cr. 664, 260 S.W. 577.
[28] Emmanuel v. United States. 24 Fed. (2d) 905.
[29] Paylor v. United States, 42 App. D.C. 428. L.R.A. 1915 D, 682.
[30] State v. Chitwood, 73 Ariz. 161 239 Pac. (2d) 353
[31] People v. Crossman, 211 App. Div. 673, 208 N.Y.S. 85.

An accomplice differs from an accessory in that an accomplice is present at the actual crime, and could be prosecuted even if the main criminal (the principal) is not charged or convicted. An accessory is generally not present at the actual crime, and may be subject to lesser penalties than an accomplice or principal.

An accomplice is someone who knowingly, voluntarily, and with common interest, participates in the commission of a crime, and can be charged with the same crime(s) for which the accused will be tried; *complicity* means association in a wrongful act; principal means anyone involved in committing a crime; an accessory before the fact aids, incites, or abets but is not physically present; an accessory after the fact receives, comforts, relieves, or assists a felon to avoid apprehension and conviction.

In Criminal law the term Accomplice includes in its meaning, all persons who have been concerned in the commission of a crime, all particepes crimitis, whether they are considered in strict legal propriety, as principals in the first or second degree, or merely as accessories before or after the fact[32].

In another sense, by the word accomplice is meant, one who not being a principal, is yet in some way concerned in the commission of a crime. It has been questioned, whether one who was an accomplice to a suicide can be punished as such. A case occurred in Prussia where a soldier, at the request of his comrade, had cut the latter in pieces; for this he was tried capitally. In the year 1817, a young woman named Leruth

[32] Foster, 341; 1 Russell, 21 : 4 B1. Com 331; 1 Phil. Ev. 28; Merlin, Repertoire, mot Complice. U.S. Dig. h.t. 2

received a recompense for aiding a man to kill himself. He put the point of a bistouri on his naked breast, and used the hand of the young woman to plunge it with greater force into his bosom; hearing some noise he ordered her away. The man receiving effectual aid was soon cured of the wound which had been inflicted; and she was tried and convicted of having inflicted the wound, and punished by ten year's imprisonment[33].

According to the Devil's Dictionary the Accomplice means one associated with another in a crime, having guilty knowledge and complicity, as an attorney who defends a criminal, knowing him guilty. This view of the attorney's position in the matter has not hitherto commanded the assent of attorneys, no one having offered them a fee for assenting[34].

At law, an accomplice has the same degree of guilt as the person he or she is assisting, is subject to prosecution for the same crime, and faces the same criminal penalties. As such, the three accomplice to the bank robbery above can also be found guilty of armed robbery even though only one stole the money.

The fairness of the doctrine that the accomplice is as guilty as the primary offender has been subject to much discussion, particularly in cases of capital crimes. On several occasions, accomplices have been prosecuted for felony murder even though the actual person who committed the murder died at the crime scene or otherwise did not face capital punishment.

[33] Bouvier's Law Dictionary, Revised 6th Ed (1856).
[34] THE DEVIL'S DICTIONARY ((C) 1911 Released April 15 1993)

One of the most notorious cases of this type was the 1952 case in England involving Derek Bentley, a mentally-challenged man who was in police custody when his sixteen-Year-old companion, Christopher Craig, shot and killed a police officer during a botched break-in (News Report [1]). Craig was sentenced to be detained at Her Majesty's pleasure, since is a Juvenile Offender he could not be sentenced to death (he was released after serving ten years), but Bentley was hanged. The incident was dramatized in the film Let Him Have It, which is what Bentley allegedly said to Craig during the incident, it being unclear whether he meant for Craig to shoot the officer, to surrender the gun. The hanging of Bentley led to public outrage and the eventual abolition of capital punishment in the United Kingdom.

(ii) Accessories-

Accessory, in criminal law, a person who, though not present at the commission of a crime, becomes a participator in the crime either before or after the fact of commission. An accessory before that fact is one whose counsel or instigation leads another to commit a crime. An accessory after the fact is one who, having knowledge that a crime has been committed, aids, or attempts to aid, the criminal to escape apprehension.

In a Legal sense Accessory means-

1. Additional; aiding the principal design; contributory; secondary; subordinate, supplemental.

2. One who aids or contributes to the commission or concealment of a crime or assists others in avoiding apprehension for the crime but not present when the crime was committed. Mere silence or approval of the crime is insufficient to make one an accessory; the person must take steps to facilitate the commission or concealment of the crime or the avoidance of the criminal's capture.[35]

Accessory after the fact

One who was not at the scene of a crime but knowingly assists, comforts, or receives a person known to have committed a crime or to be sought for the commission or attempted commission of a crime, in an attempt to hinder or prevent the Felon's arrest or punishment. Such a person is normally regarded as less culpable than the criminal and is subject to prosecution for obstruction of justice.

Accessory before the fact

One who assists, commands, counsels, encourages, or procures another to commit a crime, but is not present when the crime is committed. Such a person, known as an aider and abettor, is normally considered as culpable as the person who actually commits the crime and is normally treated by the law as an accomplice.

Accessory means a person who is not the chief actor in the perpetration of the offence, nor present at its performance, but is some way concerned therein, either before or after the fact committed.

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[35] Webster's New world Law Dictionary 2006.

An accessory before the fact, is one who being absent at the time of, the crime committed, yet procures, counsels, or commands another to commit it. It is proper to observe that when the act is committed through the agency of a person who has no legal discretion nor a will, as in the case of a child or an insane person, the incitor, though absent when the crime was committed, will be considered, not an accessory, for none can be accessary to the acts of a madman, but a principal in the first degree.

An accessary after the fact, is one who knowing a felony to have been committed, receives, relieves, comforts, or assists the felon.

No one who is a principal can be accessory.

In certain crimes, there can be no accessories; all who are concerned are principals, whether they were present or absent at the time of their commission. These are treason, and all offences below the degree of felony; such is the English Law. But whether it is law in the United States appears not to be determined as regards the cases of persons assisting traitors.

It is evident there can be no accessory when there is no principal; if a principal in a transaction be not liable under out laws, no one can be charged as a mere accessory to him.

A person who aids or contributes to a crime as a subordinate. An accessory performs acts that aid others in committing a crime or in avoiding apprehension. In some jurisdictions an accessory is called an aider and abettor.[36]

[36] Dictionary of Medician and Glossaries (Shahram) 1956.

(iii) Aiders and Abettors -

The Legal definition of Aid & abet is to order, encourage, or to actively, knowingly, intentionally, or purposefully assist, or otherwise promote or attempt to promote the commission of a crime or a tort. Affirmative conduct is regarded; aiding and abetting cannot be established by omission or negative acquiescence. The person who aids and abets is usually just as liable, and subject to the same measurement of damages and penalties, as the person who commits the crime or the tort.[37]

Aiding and abetting is a theory of criminal liability under federal and most state laws. you can be guilty of a crime either as a principal perpetrator- the "main" actor - or as an aider and abettor.

Aiding and abetting applies to someone who assists or helps one or more other people commit a crime. To be held accountable as an aider and abettor, you must know of the criminal objective and do something to make it succeed. For example, if you drive your friend to a meeting where you know your friend is going to buy drugs, you may be an aider and abettor in the drug transaction.

The key here is knowledge. While the level of participation of the aider and abettor may be relatively minor, the prosecution must show more than presence in a vehicle carrying drugs or association with conspirators known to be involved in a crime.

In other words, mere presence at the scene of a crime, even with guilty knowledge that a crime is being committed, isn't enough to make

[37] Webster's New World Law Dictionary 2006 by Wiley Publishing, Inc., Hoboken, New Jersey.

you liable for the crime itself, unless and until you do something to help the crime succeed.

Under federal law, the punishment for someone who aids and abets a crime is the same as the punishment for the person who principally committed the crime. In some states, the punishment may be less.

To prove that the defendant is guilty of a crime based on aiding and abetting that crime, the People must prove that:

1. The perpetrator committed the crime;

2. The defendant knew that the perpetrator intended to commit the crime;

3. Before or during the commission of the crime, the defended intended to aid and abet the perpetrator in committing the crime;

4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.

Someone aids and abets a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.

If all of these requirement are proved, the defendant does not need to actually have been present when the crime was committed to be guilty as an aider and abettor.

If you conclude that defendant was present at the scene of the crime or failed to prevent the crime, you may consider that fact in determining

whether the defendant was an aider and abettor. However, the fact that a person is present at the scene of a crime or fails to prevent the crime does, not, by itself, make him or her an aider and abettor.

A person who aids and abets a crime is not guilty of that crime if he or she withdraws before the crime is committed. To withdraw, a person must do two things:

1. He or she must notify everyone else he or she knows is involved in the commission of the crime that he or she is no longer participating. The notification must be made early enough to prevent the commission of the crime.

2. He or she must do everything reasonably within his or her power to prevent the crime from being committed. He or she does not have to actually prevent the crime.

The People have the burden of proving beyond a reasonable doubt that the defendant did not withdraw. If the People have not met this burden, you may not find the defendant guilty under an aiding and abetting theory.

The court has *sua sponte* duty to instruct on aiding and abetting when the prosecution relies on it as a theory of culpability.[38]

If there is evidence that the defendant was merely present at the scene or only had knowledge that a crime was being committed, the court

[38] People v. Beeman (1984) 35 Cal. 3d 547-561 [199 Cal. Rptr. 60, 674P. 2d 1318.

has a *sua sponte* duty to give the bracketed paragraph that begins with "If you conclude that defendant was present.[39]"

If there is evidence that the defendant withdrew form participation in the crime, the court has a *sua sponte* duty to give the bracketed portion regarding withdrawal.[40]

Although the jury must find that the principal committed the crime aided and abetted, the fact that a principal has been acquitted of a crime or convicted of a lesser offence in a separate proceeding does not bar conviction of an aider and abettor.[41]

In Taylor case[42], the defendant was the "get-away driver" in a liquor store robbery in which one of the perpetrators inadvertently killed another during a gun battle inside the store. In a separate trial, the gunman was acquitted of the murder of his co-perpetrator because the jury did not find malice. The court held that collateral estoppel barred conviction of the aiding and abetting driver, reasoning that the policy considerations favoring application of collateral estoppel were served in the case. The court specifically limited its holding to the facts, emphasizing the clear identity of issues involved and the need to prevent inconsistent verdicts.

To assist another in the commission of a crime by words or conduct. The person who aids and abets participates in the commission of a crime

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[39] People v. Boyd (1990) 222 Cal. App. 3d 541, 557 fn.14 [271 Cal.Rptr. 738]; In re Michael T. (1978) 84 Cal. App. 3d 907, 911 [149 Cal. Rptr. 87].

[40] People v. Norton (1958) 161 Cal. App. 2d 399, 403 [327 P.2d 87]; People v. Ross (1979) 92 Cal. App. 3d 391, 404-405 [154 Cal. Rptr 783].

[41] People v. Wilkins (1994) 26 Cal. App. 4th 1089, 1092-1094 [31 Cal. Rptr. 2d 764]; People v. Summersvile (1995 34 Cal. App. 4th 1062, 1066-1069 [40 Cal. Rptr.2d 683]; People v. Rose (1997) 56 Cal. App.4th 990 [65 Cal. Rptr.2d 887].

[42] People v. Taylor (1974) 12 Cal. 3d 686, 696-698 [117 Cal. Rptr. 70, 527 P.2d 622].

by performing some overt Act or by giving advice or encouragement. He or she must share the criminal intent of the person who actually commits the crime, but it is not necessary for the aider and abettor to be physically present at the scene of the crime.

An aider and abettor is a party to a crime and may be criminally liable as a principal, an Accessory before the fact, or an accessory after the fact.[43]

(iv) Principal -

In Criminal Law, the principal is the chief actor or perpetrator of a crime; those who aid, abet, counsel, command, or induce the commission of a crime may also be principals. In investments and banking, the principal refers to the person for whom a Broker executes an order; it may also mean the capital invested or the face amount of a loan.

A principal in the first degree is the chief actor or perpetrator of a crime. A principal in the second degree must be present at the commission of the criminal act and aid, abet, or encourage the principal in his or her criminal act and aid, abet, or encourage the principal in his or her criminal activity.

According to their role and participation in an act a "Principal" can be divided in four Categories namely -

a. Disclosed

[43] West's Encyclopedia of American Law, edition 2, (The Gale Group).

A principal whose identity is shared by his or her agent with the third party.

b. Principal in the first degree

The actual perpetrator of a crime

c. Principal in the second degree

Someone who assists in some way the principal in the first degree.

d. Undisclosed

A principal whose identity is kept secret by his agent. Both the undisclosed principal and the authorized agent are liable for fulfilling the provisions of a contract.

There is no distinction between principals and accessories. In some states the common law distinction between principal and accessory before the fact has been abolished, and the accessory before the fact is prosecuted as a principal. The penalties for being an accessory are usually much less severe than those meted out to the principal. Except where statutes provide differently, an accessory cannot be tried without his consent before the conviction of the principal, unless both are tried together. If an accessory is called as a witness, the court must decide if he is also an accomplice, because the testimony of an accomplice must be corroborated. An accomplice has been defined as any person who could be prosecuted for the crime of which the defendant is accused. This would include principals and accessories before the fact; depending on the jurisdiction and the facts of the case it might also include conspirators As a general rule, the law

refers to main actor in a crime as the principal and to assisting persons as accomplices. Technically, an accomplice is one who intentionally helps another to commit a crime. Even if an accomplice does not carry out the crime, in the eyes of law the accomplice's per-crime assistance makes him or her just as guilty as the person who does the deed itself.

V. Conspirators-

According to the Model Penal Code, a conspirator is one who, with another person or persons with the purpose of promoting of facilitating the commission of a crime -

(a) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(b) Agrees to aid such other person or persons in the planning or commission of such crime or an attempt or solicitation to commit such crime.[44]

A conspirator is a participant in a conspiracy. Conspiracy is separate offense, by which someone conspires or agrees with someone else to do something which, if actually carried out, would amount to another federal crime or offense. It is an agreement or a kind of partnership for criminal purposes in which each member becomes the agent or partner of every other member. It is not necessary to prove that the criminal plan actually was accomplished or that the conspirator was involved in all stages of the planning or knew all of the details involved.

[44] Model penal code 5.03 (1)

The main elements that need to be proven are a voluntary agreement to participate and some overt act by one of the conspirators in furtherance of the criminal plan. If a person has an understanding of the unlawful nature of a plan and knowingly and willfully joins in that plan on one occasion, that is sufficient to convict him for conspiracy.

Even though he had not participated before and even though he played only a minor part. A conspiracy may exist when the parties use legal means to accomplish an illegal result, or to use illegal means to achieve something that in itself is lawful. It is not necessary for guilt that the act be fully consummated. A statement of a conspirator in furtherance of the conspiracy is admissible against all conspirators, even if the statement includes damaging references to another conspirator, and often even if it violates the rules against hearsay evidence. Any conspirator is guilty of any substantive crime committed by any other conspirator in furtherance of the enterprise.

One involved in a conspiracy; one who acts with another, or others, in furtherance of an unlawful transaction. " It is not necessary that all of the conspirators either meet together or agree simultaneously... It is not necessary that each member of a conspiracy know the exact part which every other participant is playing; nor is it necessary in order to be bound by the acts of his associates that each member of a conspiracy shall know all the other participants therein; nor is it requisite that simultaneous action be had for those who come on later, and cooperate in the common effort to

obtain the unlawful results, to become parties thereto and assume responsibility for all that has been done before."

Conspirators are two or more people who agree to commit a crime. (The distinction between accomplice and conspirators is that the former are " helpers," while each conspirator is a principal.) Conspiracy is a controversial crime, in part because conspirators can be guilty even if the crime that they agree to commit never occurs.

The term accomplice in its fullness includes in its meaning all persons who have been concerned in the commission of a crime, all participles criminis, whether they are considered in strict legal propriety as principals in the first or second degree, or merely as accessories before or after the fact.[45] Accessories stand on a very difficult footing from accomplices. They have not the same interest in making a charge against others to save themselves. In the case of *Ishan Chandra v. Queen Empress,*[46] "Where an informer was cognizant of the commission of an offence, and admitted to disclose if for six days, the Court held that his testimony was not such as to justify a conviction except where it was corroborated."

In two cases, however, persons who are not participes criminis have been held to be accomplices, namely:

1- Receivers of stolen property have been held to be accomplices to the thieves from whom they receive goods, in a trial for theft, and

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[45] Bouvier's Law Dictionary

[46] I.L.R 21 Cal. 328 it was held:

2- Where a person has been charged with a particular offence and evidence of other similar offences by him has been admitted as proving system and intent and negativing accident persons who had been accomplices in the previous offences. The classes of accomplices should not be extended further.[47]

In R.v. Ramsadoy[48]-

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

In a conspiracy case, it has been held approving Wigmore on Evidence,[49] that " a mere detective or decoy or paid informer is not an accomplice nor an original confederate who betrays before the crimes's committal; yet an accessory after the fact would be if he had before bertayal rendered himself liable as such.[50]

A witness in nonetheless an accomplice, because at the time of his giving evidence he has already been convicted on his own confession [51]. A person who from his own testimony is found to be privy to the crime in no better than an accomplice.[52] To constitute an accomplice there need only

[47] Davies v Director of Public Prosecutions. 1954 AC : Dalmia v Delhi Admn, A 1962 SC 1821.
[48] 20 WR Cr 19 Glover J said:
[49] S 2060.
[50] Pulin V.R. 16 CWN 1105 1149
[51] Rv Rasadoy 20 WR, Cr 19
[52] Nur Md v. R, A1925 L 253

be the intention of assisting in the commission of a crime but he need not know exactly what crime was being committed.[53] A person who knowingly aids in the disposal of stolen property is an accomplice[54]. A receiver of stolen property is not necessarily an accomplice. Where a person received stolen property for safe custody but subsequently realizing the danger informed the police, he is not an accomplice.[55]

Indian law does not recognize any such thing as an accessory after the fact. A man who does not abet a crime cannot be regarded as an accomplice.

The propositions which are deducible form these Indian cases are, as pointed out by Mr. Y.H. Rao in his " The Law of Accomplices and Approvers" (1951) as follows: " The principals as defined in Section 34 to 38 and 149, Indian Penal Code, and abettors as defined in Section 107 and 108, Indian Penal Code, are the only classes of accomplices contemplated under the Indian Law and there can be no direct or indirect concern in or privity to an offence outside the said provisions. An accessory after the fact pure and simple is not in any way concerned in the original offence cannot be classified as an accomplice under the Indian Law, whatever be the position under the English Law."

Where a person was convicted of a different offence before a trial and had nothing to gain or lose by the evidence he gave in court, the could not be said to be an accomplice in law. Other persons who were directly

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[53] (per Huda J)
[54] In re Mayuthalayan, A 1934 M 721; Chetumal VRA 1934 S 185
[55] Kundan v RA 1948 S 65

concerned in the cirme as principals might be considered as accomplices, even though convicted[56].

There may be valid exceptions to the rule however as in the case of a subsequent possessor of a stolen property who may be an accomplice witness against the thief, even if he is an accessory after the fact within the meaning of the expression, for illustration (a) to Section 114, Evidence Act, permits presumption of theft from subsequent possession.

The rule that an accomplice must sustain such a relation to the criminal act that to could be jointly indicted with the accused is subject to various modifications.

It is not necessary that the accomplice (as a witness) should so unreservedly confess to his complicity in the crime charged that is strict legal propriety he brings himself within the grip of the law, and if he is tried for it, he could be convicted of it out of his own mouth. It is sufficient if, by his admissions of fact or conduct or both in the light of the surrounding circumstances, he lays himself open to grave suspicion that he had a conscious hand in the offence or was at least a consenting party to it, though the same may not be sufficient for his conviction if jointly tried along with the accused.

Nor is it necessary that the accomplice should be capable by law of committing the offence, and if so capable, should be punishable at law for his or her complicity. Capability by law of committing an offence and liability at law for punishment of an offence are considerations developed by the authors of the Penal Code mostly on ground of public policy and not

[56] Priyanath v. R, 15 CLJ 1692

as necessarily negative mean-rea in respect of acts covered by such considerations. A reasonable suspicion of mens-rea in respect of an alleged crime is the test of complicity of the accomplice in it and the measure of the untrustworthiness of a witness shown to be an accomplice is not in the least affected by considerations of the capability by law of committing the offence or the liability at law for punishment thereof, so that a course of relevant conduct prior to the crime alleged may well constitute a witness an accomplice especially in sexual offences.

2- **Persons in the position of Accomplice**

"When a witness goes on watching the alleged offence from beginning to end without raising any hue and cry or giving help to the prosecutrix though she was crying for help, the witness is nothing less than an accomplice in the matter and, as such, no reliance could be placed on his evidence unless fully corroborated otherwise."[57]

"A witness who assisted the criminals to the extent of keeping a look out to see whether the police were approaching, is in the position of an accomplice."[58]

"The testimony of a person who may not be an accomplice in a strict sense of the term but a person who in any way helped in the commission of the offence for which the accused are tried, or was cognizant of it, and omitted to disclose it for a time is not person whose testimony could justify a conviction, except where there is corroboration.[59]

[57] HarNath vs The state, AIR 1952 Ajmer.
[58] Dhanpali De Vs Emperor 1944-2 Cal 312
[59] AIR 1934 All 53.

A witness participating in the prior concert with the accused and possessing the same common intention and who has failed to disclose the fact of crime to others may be ascribed the character of an accomplice though he did not take any direct part in the execution of the crime.[60]

"Though is cannot be said that the evidence of a person who says he had seen a murder committed but did not give any information thereof is little better than that of an accomplice yet his evidence cannot be free from suspicion."[61]

"Though an accomplice is not an incompetent witness it is unsafe to base a conviction on his statement unless it is corroborated in material particulars. Where the approver states himself to be an mere by-stander and throws the whole guilt on other accused, his evidence stands in a greater need of corroboration than that of an accomplice who admits to have taken an appreciable part in the perpetration of the offence."[62]

A prosecution witness, against whom there is, apart from his own statement, ground for suspicion that he was himself a participator in the very crime for which the accused are on their trial, though, strictly speaking, not an ' accomplice', stands, in view of Section 114 practically on the same basis, as an ' accomplice'. Therefore a conviction ought not to be based on the sole uncorroborated testimony of such a witness.[63]

3- **Person not is the position of Accomplice**

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[60] AIR 1957 All 53.
[61] Birja vs Emperor, AIR 1941 Oudh 563.
[62] Atta Mohammad vs State, AIR 1952 J.K. 36.
[63] Rustam Singh vs Emperor, 24 IC 146: 15 Cr LJ 440

"Raped girl is not Accomplice"[64] - "Accused engaged a coolie to carry bundle containing stolen property. The coolie had no knowledge that the bundle contained stole articles. The colie is not in a position of an accomplice. The articles were held to be in possession of the accused engaging the coolie." [65]

A witness who saw offence being committed but kept quite may be an accomplice if there was no explanation forthcoming for the silence, but not if he offers a satisfactory explanation.[66] In *Rv. Dowling,*[67] it was held that if a witness merely lent himself to scheme for the purpose convicting the guilty, he is not an accomplice.

A persons assisting in removal of blood stains under compulsion is not an accomplice; an accused illegally pardoned by the trying magistrate himself is not an accomplice; the accused was charged under S. 328 for causing arsenic to be mixed in food of A through a girl of 13 years with intent to injure A and was convicted on the testimony of the girl who according to the prosecution was in innocent agent. Held that the girl was not an accomplice; where a person in charge of a cart states that the cart contains a dead body, he cannot be assumed to be an accomplice in the absence of proof that he was aware that the death was the result of a crime; where a person received stolen property for safe custody from the accused with knowledge that it was stolen property but subsequently realizing the danger of withholding the information disclosed it to the police is not an

[64] AIR 1952 SC 54.
[65] -King Emperor vs sheo Shanker, AIR 1954 Pat 109
[66] Ranjit Singh v. State AIR 1952 H.P 81, 94
[67] (1848)3 cox cc 509.

accomplice; an eye-witness, who had not made her statement before the police at the earliest opportunity, is not an accomplice, merely because there is delay in making a statement the witness cannot be regarded as being in the position of an accomplice and the evidence of such a witness is not required to be corroborated; 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 material particulars; where a woman was asked by the prisoner to pawn the watch for the larceny of which he was indicated and she attempted to pawn the watch when she was stopped by a Police officer, it was held that the mere circumstance of being asked to pawn the watch by prisoner did not make her an accomplice of prisoner so as to caution Jury against acting on her uncorroborated evidence[68], a man cannot be made an accomplice on mere suspicions but he must depose to have participated in the crime; if he does not he is not an accomplice and his evidence must be treated as that of an ordinary witness; a person cannot be considered to be an accomplice in law in as much as he had been convicted of a different offence before his trial and he had nothing to gain or lose by the evidence he gave in Court, of course other persons who are directly concerned in the crime as principals may be still considered to be accomplices even though convicted; accused engaged coolie to carry bundle contained stolen articles and the articles were held to be in the

[68] Rex v Kirkham (1909) 25 TLR 656(656)

possession of the accused who engaged the coolie; where a witness is not concerned with the commission of the crime[69] for which the accused is charged he cannot make an accomplice[70]; the mere fact that a person did not reveal his knowledge of the intended crime to the authorities does not make him an accomplice; where an informer was upon his own statement cognizant of the commission of an offence, and omitted to disclose it for six days, the court was not prepared to say that he was an accomplice, but held that his testimony was not such as to justify a conviction except where it was corroborated; mere fact that a person of low intelligence being struck with terror made no report of a crime does not make her an accomplice if the money paid as bribe is provided by a police officer, it is not the law that all the witnesses become accomplices.

A person concealing the dead body of a murdered man or omitting to give information of it should not be regarded as an accomplice[71]. Mere presence without taking any part in the transaction does not make one an accomplice[72].

The mere presence of a person on the occasion of giving a bribe and the omission to inform the authorities promptly does not constitute him an accomplice unless it can be shown that he somewhat co-operated in the payment[73]; persons cannot be treated as accomplices only because they happened to be present in the mob and fully aware of the persons who committed the offence but did not disclose it to the authorities[74] persons

[69] Ramasami Gounden v. Emperor, I.L.R. 27 Mad. 271;
[70] Narain Chandra v. Emperor, A.I.R. 1936 Cal. 101;
[71] Ramaswamy Gounden v. Emperor I.L.R. 27 Mad. 27;
[72] Emperor v. Edward William Smither I.L.R. 26 Mad. I.
[73] R.v. Devdhar 27 C. 144.
[74] Gopilal V.R. AIR 1954 N 186

present at the giving of bribe are not accomplices, but the case in different if they have co-operated or taken some part in it.[75] A person cannot be called an accomplice merely because he is present at the time of the offence. Merely because he makes no protest or no subsequent report to the police, it cannot be said that he connived at the crime. He might have been in a confused and terror stricken frame of mind. So evidence of such a person is not affected by his position; persons in mob aware of offenders but not disclosing them are not accomplices; where under Law there is not an obligation upon a person present to inform the authorities about the taking of bribes the person cannot be called an accomplice and his evidence at the trial must be treated as that of an ordinary witness; when witness in not concerned with commission of crime for which accused is charged he cannot be called accomplice. Mere being aware cannot make him accomplice.

Where a person charged with others is acquitted, his evidence so far as it inculpates them may not be the evidence of an accomplice but only that of an interest witness[76]. Person paying money to sub-registrar for early return of document is not an accomplice, but an interested witness and some corroboration should be required.[77] Where some persons were compelled by the bribe taker to take Rs. 10 each as hush money which they returned on informing the police, they were not accomplices[78] where money was paid to a police sub-inspector by a money-lender, for obtaining

[75] Khadam V.R. R. 15 PWR Cr. 1919

[76] R. v. Eckersley 1953 time 18 June CCA.
[77] Moogappa v S, A1961 Mys 44.
[78] Pandita v R, A 1950 A 1

the release of person wrongfully confined-held that such payment was not an illegal gratification, but a case of extortion and that the money-lender advancing the money could not be regarded as an accomplice[79] ; a mere eye-witness to the giving of the bribe, or person who made entries in account book subsequent to the transaction, may be tainted witnesses, but they are not accomplices[80]; a person charged with an offence by the police but discharged by the magistrate after examination is not an accomplice.[81] There is no assumption that the prosecutrix in a rape case is an accomplice[82] the mere fact that a witness of the election petitioner printed the offending leaflet cannot make him an accomplice[83] ; detective supplying marked money and placing bets with the accused for detection of crime cannot be treated as an accomplice[84] ; a policeman or other person procuring an illegal sale of liquor in order obtain a conviction is not an accomplice[85];

In R v. Javi Charan[86], accused No 2 was charged with receiving stolen property (railway tickets) knowing the same to be stolen from accused No.1 a ticket-collector. A spy and informer instigated the offence by offering to buy some of the tickets from him- Held that the action of a spy and informer in suggesting and initiating a criminal offence is itself an offence, the act not being excused or justified by any exception in the Penal Code, or by the doctrine which distinguishes the spy from the

[79] Akhoy v Jugal, 27 C 925.
[80] R v Smither, 26 M 1
[81] Nga Moung v R. LBR (1893-1900) 467.
[82] Harendera v R, 44 CWN 830.
[83] Virendra v Vimal, A 1976 SC 2169.
[84] Govinda Balaji v RA 1936 N 245.
[85] R.v. Bastin, LBR (1893-1900); R.V. Nga Swe, UBR 1897-1901 Vol I, 176.
[86] 19 B 363.

accomplice. But the act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice. At the instigation of the Excise Deputy Collector a student was not an accomplice but a spy or detective and his evidence could be acted upon without corroboration. A person who makes himself an agent for the prosecution with the purpose of discovering and disclosing the commission of an offence, whether before associating with wrong-doers or before the actual perpetration of the offence, is not an accomplice but a spy, detective or decoy whose evidence requires no corroboration, though the weight to be attached to it depends on the character of each individual witness in each case. But a person who is associated with an offence with a criminal design, and extends no aid to the prosecution till after its commission, is an accomplice requiring corroboration[87].

Even if the object of a person who instigates another to commit a crime is to catch him in the act of committing the crime, instigation by him nevertheless amounts to an abetment and he must be regarded as an accomplice when the object of the instigation is to make the offender commit the offence and the person instigated actually commits offence[88].

A person was present when the plans for a dacoity were hatched up and was invited to join. H agreed to go the meeting place armed, but went unarmed and remained there with the conspirators for six hours and took part in the preparations for the time. It was ultimately decided to postpone

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[87] R v Chaturbhuj, 38 C 96; Mohan v R A 1947 N 109; R v Singh Rai, A1951 Or 297; S v Hiralal, A 1952 N 58; Bhuneswari VR A 1931 O 172; Mangat Rai V R, A1928 L 647; Ambujam v S, A1954 M 326.

[88] In Re Koganti Appayya A. 1938 M 893.

the docoity till the moon had gone down and when he was sent to town to get food for some of the offenders, he sent information to the police, it was held that he was an accomplice and his evidence needed corroboration[89].

In a single judge decision in Madras it has been observed that the evidence of informer or decoys requires corroboration, but there is no reference to any authority[90]. In Oudh also it has been held that evidence of spy requires corroboration like that of an accomplice[91]. Bogus pynters who are police agents are accomplice and they must be corroborated by independent evidence[92]. Punter's evidence should be accepted with caution[93].

Where a person presented document for registration to a Sub-Registrar and at the suggestion of the peon in the office of the Sub-Registrar that the Sub-Registrar expected some money of early return of the document, he paid some money to the Sub-Registrar and the latter accepted the same, if was held that the person could not be said to be an accomplice but all that could be said was that he was an interested witness and the Court should call for same corroboration before his evidence was accepted[94].

Where witness were not willing party to the giving of the bribe to the accused and were only actuated with the motive of trapping the accused, it was held that their evidence could not be treated as the evidence

[89] Karim v R, A1928 I. 193: Rrelied on in Mangat v R, A1928 L 647.
[90] In re Sethuram, 1951 I MLJ 586.
[91] Surat V R, 81 IC 896, Bhuneswari v R A1931 O 172.
[92] R V Harilal A 1937 B 385; Harmazdyar v R, A1948 B 250:50 Bom LR 163; Tarsem V S, A1960 Pu 72.
[93] S.V. Shambhudayal AIR, 1957 MP 17.
[94] G. Moogappa vs state, AIR 1961 Myr. 44.

of accomplices. Their evidence was nevertheless the evidence of partisan witnesses who are out to entrap the accused. It could not be relied upon for implicating the accused without independent corroboration[95]; it may be the bribe givers had intended to pay the bribe, but before the payment was made, if both of them had the full intention of laying trap of catching the accused and then the money was paid they cannot be said to be a accomplices of the accused.

When a witness goes on watching the alleged offence from beginning to end without raising any hue and cry or giving help to the prosecutrix though she was crying for help, the witness is nothing less than an accomplice in the matter and, as such, no reliance could be placed on her evidence unless fully corroborated otherwise; where a person was undoubtedly cognizant of the commission of an offence and omitted to disclose it for six days, the court was not prepared to say that he was an accomplice. From any point of view, however, his testimony is not such as to justify a conviction, except where he is corroborated; witnesses witnessing murder but remaining inactive are to be treated as accomplice. Their evidence must be corroborated in material particulars by independent evidence; when a person sees a murder committed and gives no information thereof, his evidence is little better than that of an accomplice. The evidence of a person who has seen a murder committed but does not give any information thereof may or may not be better than of an accomplice but the truth of the story told by him is not above suspicion; a man who quietly looks on at a murder, may not necessarily be an

[95] Rao Shiv Bahadur Singh v. State of Vindhya Pradesh AIR 1954 SC 322.

accomplice; but he is not a safe witness against the alleged murderer the rule of prudence about the corroboration of the evidence of an accomplice would not apply to a person who can not be regarded as an accomplice, being an eye-witness to murder but not taking part in it and keeping quiet i.e. not informing the police about the occurrence of the crime. The credibility of such witness has to be determined on crime. The credibility of such witness has to be determined on merits. His evidence cannot be brushed aside solely, for the reason that his evidence is not better than that of an accomplice; when a prosecution witness cannot strictly be called guilty associate of the person involved in the murder, yet if his conduct immediately preceding the murder and after the murder shows him to be a person not altogether above suspicion in connection with the death, it will not be safe to act on his evidence without some corroborative evidence in some material particulars from an independent source; person who is aware of intention of certain people to commit murder and does not disclose it to anybody, is consenting party to crime and an accomplice and his evidence cannot be accepted without corroboration. Evidence of accomplices cannot be accepted as corroborative of each other. The appellant was convicted of feloniously receiving 27 chests of tea and was indicted along with three other men names P, B and S for stealing and receiving the tea in question. They pleaded guilty. P and another D who on their own admission had participated in the larceny were the prosecution witnesses among others. Wife of B the other prisoner was also called as a witness but B was a witness to the crime. The truth of her statement was

not disputed and it was conceded that she was not in any way an accomplice[96].

An approver to whom a conditional pardon is tendered or an accused discharged or acquitted are on the same level and their evidence is open to suspicion.

Where the witnesses took an active part in carrying away the deceased while he was in a grievously hurt condition and left him in a field in that helpless condition which resulted in his death, their evidence was no better that that of accomplices and it could not be relied upon unless corroborated in some material respects in convicting the accused.

A witness not actually a participator in the offence and does not so depose but made an accomplice on mere suspicion is not an accomplice and his evidence must be treated like other witnesses. Evidence of witness who are aware of the conspiracy and of the objects of the same, and who were merely tools in the hands of the leaders of the conspiracy for certain time and had nothing to do with the control and possession of firearms, (the main charge against the accused person) should not be viewed absolute suspicion.

Where witness is found from his own testimony to be privy to crime alleged to be committed by accused, his evidence is no better than that of accomplice.

Two persons A and B had been jointly charged with a theft but process was issued against the former only and he was duly brought up for

[96] R. v. Willis 85 LJ KB 1129.

trial before the Bench. At trial B against whom no process was issued, was produced as a witness in defence. It was held that B was in no sense a prisoner and that his evidence should have been received. Relations of three or four accused implicating fourth, a stranger. It was held that their evidence cannot form basis of conviction without corroboration.

Where the prosecution case was that on the abetment of the accused the witness for prosecution worked the mine but all that the witnesses had stated was that they were told by the accused that a plan had been prepared and there was no harm in working the mine, and not that the license for mining operations was obtained. Held that the witnesses should have known that the property in the mine belonged to the Government and should have also known that prior to the grant of the license mining operations could not be legally carried on. The witnesses must therefore be regarded as accomplices of the accused and as there was no corroboration of the statement that the mine was worked at the instigation of the accused the evidence could not be held to be independent or sufficient to justify the conviction of the accused.

Accused, police constable taking illegal gratification where witnesses were compelled to take hush money, witness making report and returning money it was held that witnesses were not accomplices in crime of accused and their evidence was not accomplice evidence.

Indictment against the prisoner was as a principal in the second degree in the manslaughter of R. The facts of the case as to the fight and the presence of the prisoner at it, together with his conduct on the occasion

were proved by persons who were present at the boxing match. The prisoner's counsel contended that as all persons who were present at the fight were in the eyes of the law, principals in the second degree of the offence, their evidence as in the case of accomplices required confirmation. Held that they were not such accomplice as to require any further evidence to confirm them.[97]

In *Shiv Bahadur Singh v State of Vindhya Pradesh*[98], the Supreme Court held that witnesses not willing party to giving of bribe to accused but only actuated with the motive of trapping the accused, cannot be treated as accomplices. However the evidence of such witnesses is nevertheless the evidence of partisan witnesses who were out to entrap the accused and as such, their evidence cannot be relied upon without independent corroboration. Subsequently in *Major Barsay v State of Bombay*[99], the Supreme Court had to consider the same matter and it was emphasized in that case that though a trap witness is not an approver, he is certainly an interested witness in the sense that he is interested to see that the trap laid by him succeeded. He could at least be equated with partisan witness and it would not be admissible to rely upon his evidence without corroboration. However, the evidence of a trap witness is not of a tainted one and that it would only make a difference in the degree of corroboration required rather than of necessity for it[100].

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[97] Rex vs Hargrave, 5 Car & P. 170.
[98] AIR 1954 SC 322.
[99] AIR 1961 SC 1761
[100] Ganadhes v Khendeparkar 1968 Cr LI 925 at 926

In a case under Prevention of Corruption Act the complainant is a person who in technical and legal sense of the term is a person who gives bribe and, therefore, he is an accomplice and his evidence requires corroboration. In every trap-case whenever the complaint is filed there is always a person who has to give money to the accused which in fact is a bribe money. But without giving the bribe, bribe cannot be accepted and, therefore, in order that the trap succeeds, a person has to give bribe if the bribe is demanded otherwise no case can be made out. Therefore, though corroboration is necessary in law it is always to be decided having regard to the facts of each case as to how much corroboration is necessary. For that one has to examine every complainant in the manner in which he works. There could be a person who would be unwilling to give any bribe to any person at any point of time.

Thus there are grades and grades of accomplices and therefore, in order to appreciate the entire evidence it is necessary that one has to understand what type of complaint is to be dealt with in a particular case. Hence, a person who for the good of the people at large in order that the corruption is rooted out, files a complaint and does not oblige the accused by paying money, he is not doing factually anything wrong though in technical term he may be an accomplice and his evidence requires corroboration. The corroboration would be a slight corroboration and slight corroboration would be sufficient[101].

[101] Naresh Kumar Kibabhai vs state of Gujrat, 1986 CrlJ 457

A man who is merely cognizant of crime or who has made no attempt to prevent it or who has not disclosed its commission or a man who sees a crime and does not give information is not an accomplice, but there must be corroboration in material particulars to his evidence.[102]

" A person who is present at the commission of a crime and is interested in not disclosing it is in the position of accomplice.

The mere fact that this witness did not reveal knowledge of the intended crime to the proper authorities is not sufficient to made him an accessory or accomplice so as to vitiate his evidence."[103]

4. Bribery Cases-

A person who affers a bribe to a public officer is an accomplice in the offence of taking of illegal gratifications[104].

Person who actually pay bribe or co-operate in such payment or are instrumental in the negotiations for the purpose, are also accomplices of the person bribed. When a person give a bribe to a public officer or servant with a view to induce him to abstain from doing his duty and to the detriment of a third person, the bribe giver is equally guilty with the bribe taker, as their common intention is to defraud a third party. He is an immoral person and has little sanctity for the oath. His evidence requires a greater amount of corroboration. On the contrary where a person who is compelled by force of circumstances to give bribe to a public servant to induce him to do just his plain duty which he refuses to do otherwise, the

[102] AIR 1956 SC 379.
[103] AIR 1939 Cal. 335-336.
[104] Pyara Mohan vs State AIR 1956 All. 358

degree of immorality involved is considerably less on the part of the bribe-giver and his credibility would stand on a higher footing[105].

Where a person had given bribe to the accused on previous occasions it is proper to require the same degree of corroboration for his evidence in regard to the alleged bribe as in the case of an accomplice[106].

In *Kamal Khan v. Emperor*[107], Wadia, J., made the following observation:

" But in case of bribery the persons who pay the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about it. It is not possible to expect absolutely independent evidence about the payment of a bribe, and a distinction has to be made between persons who have voluntarily paid a bribe to a public servant in order to secure some advantage for themselves, and persons, such as Krishna, Dadu and Namu in this case, who have been compelled by improper pressure put upon them by a public servant to pay a bribe. In case of this Kind, where the payment of the bribe has not been voluntary, very slight corroboration would, in my opinion, be sufficient to make the evidence of such persons admissible against the receiver of the bribe."

In the same case Beaumont, C. J., said- "In my opinion, the rule of the Court which requires corroboration of the evidence of an accomplice as against each accused, if it applies at all, applies with very little force to a case like the present, in which the accused is charged with extorting a bribe from other persons. The objections which usually arise to the evidence of

[105] State v. Keshava lal. AIR 1951 Saur. 25; Sri Nivas Mall v. Emper or, AIR 1947 PC 135.
[106] M. M. Gandhi v. State of Mysore, AIR 1960 Mys. 116: 1960 Cr. LJ 34.
[107] 59 Bom. 486: A. I.R. 1935 Bom. 230: 156 I.C. 615: 36 Cr. L.J.

an accomplice do not really apply where the alleged accomplice, that is, the person who pays the bribe, is not a willing participant in the offence but is really a victim of that offence."

In *Srinivas Mall v. Emperor*[108], their Lordships of the Judicial Committee of the Privy Council in dealing with the contention that reliance had been placed on the uncorroborated evidence of accomplices observed:

" Section 133, Evidence Act, expressly provides that ' an accomplice shall be 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'. No doubt the evidence of accomplices ought as a rule to be regarded with suspicion. The degree of suspicion which will attach to it must however vary according to the extent and nature of the complicity: sometimes, as was said by Sir John Beaumont, C.J. , in *Papa Kamal Khan v. Emperor*[109], accomplice is ' not a willing participant in the offence but a victim of it'. There is ground for saying that the accomplice in this case acted under a form of pressure which it would have required some firmness to resist[110]."

In *K.H. Bhattacharjee v. Emperor*[111], it has also been stated as follows"- "It is true in a sense that the person who pays bribe is an accomplice of the person who received the bribe; but the position is essentialy different from that of, say, one dacoit deposing regarding the dacoity against his fellow

[108] A.I. R. 1947 P. C. 135 : 26 Pat. 460 (P.C.) .
[109] 59 Bom. 486: A.I.R. 1935 Bom. 230: 156 I.C. 615 : 36 Cr. L.J. 968.
[110] Narayan Prasad v. Emperor, A.I.R. 1948 Nag. 342 at p. 343: I.L.R. (1948) Nag. 276: 1949 N.L.N. 92 1949 A. W.R. Sup. 40.
[111] A.I.R. 1944 Cal. 374:48 C.W. N. 632 : 215 I.C. 298.

dacoits. In the present case, Kunja Bihari Ghose was not in danger of prosecution. He had nothing to gain by falsely implicating other accused persons. Though technically an accomplice, he was essentially, as the learned Magistrate has pointed out, a victim.

The result of a review of various cases leads to the following conclusion. The giver of the bribe is, in law, an abettor of the offence and, therefore, an accomplice, irrespective of whether the giving was voluntary or in response to a demand accompanied by threat or fear. But in the later case, i.e. of bribe-giving under threats, whether the evidence of the accomplice is safe to be acted upon, depends on circumstances, In the first place, one must be satisfied that the story of threats is itself reliable and not the outcome of a conspiracy to involve a strict officer in troubles or is motivated by some other personal malice. If, on being so satisfied, the Court considers that the sole testimony of the accomplice is safe to be acted upon, a conviction can be based thereon[112].

It was held in *R.v. Maganlal and Motilal*[113], that compulsion brought to bear upon a witness to give bribe to an accused person does not make the witness less guilty as an abettor. In this case the accused were charged under Sec 161, IPC, for taking bribes from the rayats of certain villages. The only evidence against the accused was that of persons who had either subscribed to the bribes or collected subscriptions or paid the money to the accused. They stated that they had offered the bribes, because the accused who were classers in the Revenue Survey Department, threatened to raise

[112] Biswabhusan Naik v. The State, A.I.R. 1952 Orissa 289 at p. 299: I.L. R. (1952) Orissa 107.
[113] (1889)I.L.R. 14 Bom 115.

the assessment, cut down the hedges and erect new boundaries. It was held by the High Court that the limits of the application of the doctrine of necessity as an excuse for an act otherwise criminal are those prescribed in Sec. 94 of the Indian Penal Code. Therefore witnesses who in order to avoid pecuniary injury or personal molestation had offered or given bribes to a public servant were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of an accomplices.

But one attempting to bribe another with the approval of the court was not an accomplice. So one giving a bribe to an officer demanding a bribe, in the form of marked bills furnished by agents of the department of justice, was not an accomplice[114]. The wife of a fugitive who was a party to a bribery agreement to refrain from apprehending the fugitive was held not an accomplice in the crime of asking, receiving or agreeing to receive a bribe[115]. The receiver of a bribe has been held not to be the accomplice of the giver[116]. An officer has been held not to be an accomplice of one accused of offering him a bribe because of his agreement with accused and other officers to get money from other third parties not named in the indictment, Where an attorney asked a prisoner for payment of money as a bribe for having charges against him released, the prisoner was not an accomplice of the attorney in the commission of the crime of bribery by asking for a bribe. Witnesses taking one accused of robbery to another town after the commission of the offense but without knowledge of his

[114] Ritzman v. United States, 3 Fed. (2d) 718.
[115] People v. Lips 59, Cal, App. 381, 211 Pac. 22.
[116] Pepole v Martin, 114 Cal. App. 392, 300 pac. 130.

connection therewith, or even that an offense had been committed, were not accomplices. Demanding a bribe; the person paying it is not an accomplice[117].

A person who offers bribe to a public officer is an accomplice in the offence of taking an illegal gratification. Persons who actually pay bribe or co-operate in payment or are instrumental in the negotiations are also accomplices of the person bribed, and a person who with knowledge that the bribe has to be paid advances money is clearly an abettor and as such an accomplice[118]. A distinction was drawn in case between an accused who takes money and one who gives bribe, as they could not be jointly tried for the same offence[119]. Wigmore says that in bribery or subornation the other participator is not an accomplice[120].

A person accompanying another entrusted with money to be given as a bribe, with knowledge that it was to be so paid and in order to witness and assist in such payment is in the position of an accomplice. The giver of the bribe is in law an abettor of the offence and therefore an accomplice irrespective of whether the giving was voluntary or in response to a demand accompanied by threat or fear. But in the latter case, i.e. of bribe giving under threats, whether the evidence of the accomplice is safe to be acted upon, depends on circumstances. In the first place, one must be satisfied that the story of threats is itself reliable and not the outcome of a conspiracy of involve a strict officer in troubles or is motivated by some

[117] S v Durham 1898, 73 Minn 150; Wig s 2060.
[118] Md Usaf v RA 1929 N 215 .
[119] R v Mathews A 1929 C 822.
[120] People v Coffey, 1912 , 161 California 433.

other personal malice. If on being so satisfied the Court considers that the sole testimony of the accomplice is safe to be acted upon, a conviction can be based thereon. In such a case even if corroboration is considered desirable a less strict standard of corroborative evidence may be accepted as, for instance, evidence of previous statements and the like.

There is at one end the unblushing giver, who pays the bribe and gets an advantage , and subsequently gives evidence for some ulterior purpose. He is an accomplice of the darkest kind. At the other extreme is the person who, from the very beginning has no intention of giving a bribe, but makes a show of doing it, so as to bring the dishonest public servant to book; such a man far from being an accomplice is a good citizen, to be respected and encouraged. Between the two, there are many gradations of accomplice hood, and consequent legal infamy and need for more or less corroboration. There is the giver, who goes half way with the intention of paying, but for some reasons beyond his control thinks it wise or safe to report to the authorities and becomes a witness. He is only a less infamous accomplice than the extreme type. Another, who changes his mind without external pressure, is still technically an accomplice, but not as unreliable as the two other types. Then there is the decoy or the spy, who with no intention to pay the bribe makes himself the instrument of the authorities in tracking the dishonest public servant. The professional spy or decoy, doing this for pecuniary or other advantages though not an accomplice , is suspect all the same, and requires corroboration. If on the other hand, the decoy is not acting for gain, but being himself the victim of the demand

helps the authorities spontaneously from a sense of citizen's duty, he is a reliable and respectable witness.

In *Ramaswami Gounden v R*[121]. Subrahmania Ayyar, C.J., said " Take for instance cases of bribery on the part of public officials not infrequently occurring in this country. Suppose one. Where the witness himself has tempted the public servant with the bribe for some unrighteous end of his own and another where the facts are as in the cases *Narayanswami Naidu, Aswartha Reddi and Krishnaswami v. R*[122] of (1903, unreported) where a police Inspector was held to have extorted money by a threat of falsely implicating the witness in a charge of murder and handcuffing and imprisoning them unless they paid money. It is scarcely necessary to say that it would not be good sense to treat the two cases alike. The proper application of the rule would be to require corroboration in the one and to dispense with it in the other. This was clearly implied in the judgment of this court in the said criminal appeals, when it was observed. "They are mere involuntary accomplices than voluntary accomplices and in that light their evidence is not tainted as much as its would otherwise be."

A distinction must be drawn between a person who is threatened and becomes an accomplice and a person who voluntarily takes part in the crime. In the former case corroboration necessary to establish the credit of such a person, would be very much less than in the latter case. In bribery cases this factor becomes of great importance by the very nature of crime

[121] 1903 I.L.R 27 Mad. 271.
[122] (Cr. App. Nos. 26,28 and 33)

itself. When a person gives a bribe to a public servant with a view to induce him to abstain from doing his duty and to the detriment of a third party as in a case of bribing an Income tax Officer with a view to evade payment of proper income-tax, the bribe giver is equally guilty with the bribe taker, and his evidence would certainly require a greater amount of corroboration than in the case of person who is compelled by force of circumstances to give bribe to a public servant to induce him to do just his plain duty which he refuses to do otherwise. In the latter case, although there is the element of wrong doing, the degree of immorality involved is considerably less on the part of the bribe giver and his credibility would stand on a higher footing than that of a bribe giver in the former case . It may be the bribe givers had intended to pay the bribe, but before the payment was actually made, if both of them had the full intention of laying a trap for catching the accused and then the money was paid, they cannot be said to be accomplices of the accused. Witnesses not willing party to giving of bribe to accused and actuated only with the move of trapping the accused. It was held that their evidence couldn't be treated as the evidence of accomplices. Their evidence is nevertheless evidence of partisan witness and cannot be relied upon without independent corroboration.

The rule of the Court which requires corroboration of the evidence of an accomplice as against each accused, if it applies at all, applies with very little force to a case in which the accused is charged with extorting a bribe from other persons. The objections which usually arise to the evidence of an accomplice, do not really apply where the alleged

accomplice, that is, the person who pays the bribe, is not a willing participant in the offence, but is really a victim of that offence. In cases of this kind, where the payment of the bribe has not been voluntary, very slight corroboration would be sufficient to make the evidence of such persons admissible against the receiver of the bribe[123].

5. Whether a prosecutrix in a rape case is an accomplice:-

Even though a victim of rape cannot be treaded as an accomplice, the evidence of victim in a rape case is to be treated almost like evidence of an accomplice requiring corroboration. If the judge is of opinion that there is no need of corroboration he should give reasons for dispensing with the evidence of corroborating. If it is illegal to base conviction on an uncorroborated testimony of raped woman. In a case of grown up and married woman it is always safe to insist on corroboration[124],

It should be borne in mind that in India a girl or a woman would be extremely reluctant even to admit that any rape has been committed on her. She would be conscious of the danger of being looked down upon or even losing the chance of a suitable marriage and so on. On principle the evidence of a victim of sexual assaults stands on par with the evidence of any injured witness. Her evidence is entitled to great weight without any corroboration[125].

A girl who is victim of an outrageous act is not an accomplice though the rule of prudence requires that the evidence of a prosecutrix

[123] AIR 1935 Bom 230 and AIR 1947 PC 135 were relied on. " vs Emperor, AIR 1948 Nag. 342
[124] Sheikh Zakir v. State of Bihar AIR 1983 SC 911.
[125] Bhogin Bhai Hirji Bhai vs state of Gujrat A I R 183 SC 753.

should be corroborated before a conviction can be based upon it. A prosecutrix of sex- offence is in fact a victim of the crime cannot be put on par with an accomplice. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under S. 118 of Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more, What is necessary is that the Court must be alive to and conscious of the fact. That it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to S.114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix, it may look for evidence that may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totalities of the circumstances appearing on the record of the case disclose that the

prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. Therefore, ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. Ordinarily the evidence of prosecutrix must carry the same weight as is attached to an injured person who is victim of violence, unless there are special circumstances which call for grater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation[126].

In English law there is a rule requiring corroboration to a prosecutrix in sexual offences. The rule is also gaining admittance in the law consisting of cases, which, for widely differing reasons, hold that in sexual offences, it is prudent as a rule of practice though not as of law, to look for corroboration to the testimony of a prosecutrix. In our country this rule is not characterized by inflexibility for, there are many decided cases which recognize the soundness of not insisting on corroboration uniformly to the testimony of all kinds of female witnesses in sexual offences. Courts are also conscious that it is no where laid down that a complainant in a sexual offence does not stand on a different footing from an accomplice and that under law, corroboration is not necessary for the evidence of an outraged woman.

[126] State of Maharashtra v. Chadraprakash Kewalchand Jain, AIR 1990 SC 658 at p. 664.

It is well recognized that a sexual offence can be easily leveled against a man and that it is difficult for the indicated man to wriggle out of the charge.[127]

If the jury has been apprised of the necessity, ordinarily speaking of corroboration of the evidence of the prosecutrix it is for the jury to decide whether or not it will convict on the uncorroborated testimony of a prosecurtrix in the particular circumstances of the case before it. It is well established that the nature and extent of corroboration, necessary, vary with the circumstances of each case. The nature of the corroborative evidence should be such as to lend assurance that the evidence of the prosecutrix can be safely acted upon.[128]

The genesis of the rule of corroboration regarding female witnesses in sexual offences can be traced to the example given under Section 8 of the Evidence Act. But under Section 8, what is sought to be provided is that the fact that immediately after being raped, the woman complained about it would be admissible as conduct. Anyway it is little peculiar that a woman, in respect of whom a sexual offence is committed, should be regarded as an accomplice or someone partakes the nature of an accomplice. She is not a co-accused. Thus in a rape case she is a victim. If there is consent, the offence ceases to be a rape, though, if a woman is married, the offence amounts to adultery. In the latter kind of offences also, the erring female is not punishable as an offender. So she will not be an accomplice under law. However caution may not be misplaced while

[127] Emperor v. Mahadeo Tatya, AIR 1942 Bom 121
[128] Sidheswar GAnguly v. State of W.B. air 1958 sc AT P. 147-48.

considering the evidence of an allegedly seduced woman, if she had intimacy with the accused or if she is of loose morals. The conduct of a ravished woman immediately after the occurrence will be also helpful in judging her subsequent evidence in court. Under Section 8 of the Evidence Act, the fact that shortly after the alleged rape, the woman had made a complaint relating to the crime, then the circumstances under which, and the terms in which the complaint was made would be relevant a conduct on the part of the woman. Even if she had not given any complaint, if her statements were made at or about the time the occurrence, those statements would be corroborative of her evidence as per the provisions of Section 157 of the Evidence Act.

Even though a victim of rape cannot be treated as an accomplice, the evidence of the victim in a rape case is to be treated almost like the evidence of an accomplice requiring corroboration. Hence there must be an indication in the course of the judgment that the judge had this rule in his mind when he prepared the judgment and if in a given case the judge finds that there is no need for such corroboration he should give reasons for dispensing with the necessity for such corroboration. But if a conviction is based on the evidence of a prosecutrix without any corroboration it will not be illegal on that sole ground. In the case of a grown-up and married woman it is always safe to insist on such corroboration. Wherever corroboration is necessary it should be from an independent source but it is not necessary that every part of the evidence of the victim should be confirmed in every detail by independent evidence. Such corroboration can

be sought from either direct evidence or circumstantial evidence or from both.[129]

A woman against whom the offences of kidnapping (Section 361 read with Section 363 IPC) or abduction are committed cannot come under the category of accomplices because it cannot be said that a girl or woman in question has a hand in the perpetration of the offences. So there may be ordinarily no need to insist upon corroboration for such testimony. But where the female concerned has given her tacit consent for being taken away by the accused, then there would be need to look for confirmation of the evidence given by the woman.

If a man commits the offence of bigamy, the woman who contracts such a marriage is also guilty as an abettor. So the woman partner of a bigamous marriage is an accomplice and her evidence for the offence of bigamy, punishable under Section 494 IPC, needs corroboration.

The willing party in a prosecution for unnatural offence should be regarded as an accomplice and therefore his evidence requires corroboration.

In a statutory rape charge the prosecutrix is not an accomplice though the crime is committed with her consent.[130] For a third party to be an accomplice of one being tried as accessory to rape, the evidence must tend to connect such party with the offence as principal or accessory.[131] In charge of fornication or adultery or seduction the woman may be an

[129] AIR 1983 SC 911 P. 914-15.
[130] Yeager v. United States, 16 App. D.C. 356
[131] Kitchen v. State, 101 Tex. Cr. 439, 276 S.W. 252

accomplice.[132] But adultery does not necessarily involve criminal concurrence of the two persons physically involved in the act. That a female under the age of consent may be an accomplice in the charge of adultery has been both affirmed and denied. Some cases hold that one living in a house by procurance which is charged as being kept a disorderly house is an accomplice, but it has been held that an inmate of ad disorderly house, who is not shown to have assisted in its operation, is not an accomplice in the crime of keeping a disorderly house.[133] That a female is an accomplice in a prosecution for pandering has been both affirmed and denied.[134] A female who paid the porter fifty cents for every man who visited her hotel room which she voluntarily engaged for the purpose of having sexual intercourse with men was held to be an accomplice in prosecution of the porter for pandering.[135] In a prosecution of a hotel porter for procuring an officer who went to a hotel and arranged with the porter to send a woman to his room for illegal sexual purposes was an accomplice. The female is not an accomplice in a prosecution for procuring a female to leave the state for the purpose of prostitution, nor is she accomplice in the crime of profiting from the proceeds of her practice of prostitution. Statements to an officer by a man found with a woman charge with vagrancy under such circumstances as to justify the conclusion that they had engaged or were about to engage in sexual intercourse were those of an accomplice.[136]A prosecutrix over the age of consent may be an

[132] State v. Shelton, 46 Idaha 456, 267 Pac. 95W
[133] Ponder v. State, 110 Tax. Cr 627 10 S.W. (ed) 720
[134] People v. Brown 61 cal App. 248, Pac 58
[135] Thompson vs. state, 425 Tex. Cr. 28, 66.5 W. (ed) 328
[136] People v. Lorraine, 196 N.Y.S. 323

accomplice in a prosecution for sex perversion. Some cases hold that a prosecutrix in a prosecution for incest in an accomplice,[137] especially where the prosecuting witness voluntarily participate in the incestuous act, while other hold to the contrary. A girl under the age of consent in prosecution for incest was held not an accomplice.[138] In jurisdictions where the opposite would be the law as to a woman of sufficient age to consent, but defendant's daughter, nearly seventeen years old, consenting to incestuous intercourse upon mere promise of new clothes was an accomplice.[139] A woman who testified that she had permitted improper relations between herself and her uncle for a number of years was held to be an accomplice. A woman was held to be an accomplice where she made no resistance to incestuous course, although she might not have engaged in the act voluntarily and with the same intent as accused.[140] The girl has been held not to be an accomplice of defendant charged with carnally knowing where such defendant was in control of the girl and acting in loco parentis.[141] In a charge of sodomy one who voluntarily submitted to the commission of the offense by the defendant is an accomplice; but where such submission is without his consent, as by force,[142] or by reason of his immature years or lack of intelligence and understanding, such person is not an accomplice. A boy under fourteen years of age has been held not to

[137] People v. Oliver (Misc.), 25 N.Y.S. (2d) 372
[138] Hicks v. State, 219 Ark. 5328, 243 S.W. (2d) 372
[139] Tindall v. State, 119 Tex. Cr. 153, 43 S.W. (2d) 1101
[140] Masten v. State, 100 Tex. Cr. 30, 271 S.W. 920
[141] McCreary v. Commonwealth, 163 Ky. 206, 173 S.W. 351
[142] People v. Battilana 52 Cal, App (2d) 923.

be an accomplice to the crime of fellatio; so also in a charge of lewd and lascivious conduct.[143]

6. Do person involved in a crime for discovery and disclosure of an offence like spy, paid informer, detective, Decoy, Trap-witness etc. fall under the category of accomplice: -

One who, as a spy of a detective, associates with criminals society for the purpose of discovering or making known their crimes, and who acts throughout with this purpose and without any criminal intent, is not an accomplice, and it is immaterial that he encouraged or aided the commission of the crime.

Meaning of Spy:-

A spy is a secret agent to watch others or to collect information. He may or may not have powers of apprehension as a policeman. During a state of war, the belligerent countries organize a network of espionage. The spy ring is a familiar device to get information regarding military targets and development of armies in the enemy country. In peacetime also, the police administration of a country has to employ spies to detect crimes particularly aimed at undermining the functions of a State. There will be also need to employ spies to apprehend persons engaged in selling useful information to foreign countries or for the purpose of unearthing the anti-national activities of certain organizations.

Meaning of Paid Informer:-

[143] People v. Camp, 52 Cal App. (2d) 923

An informer is a person who is engaged by the police to fish out information with regard to commission of offences. He is a person depending on and caring more for the favours of the police. Sometimes he resorts to unscrupulous means to get information. So his evidence also has to be viewed with caution. The distinction between an accomplice and an informer is apparent. We may take an example of a conspiracy. If at the time when a person joins the conspiracy, he had no intention of bringing his associates to book, but his sole object was to partake in the commission of a crime. He cannot be an informer, but an accomplice.

Meaning of Detective:-

A detective can be said to be a person employed for or concerned in the work of detection of crimes. He may be usually a policeman not in uniform who investigates crimes by associating to some extent with the suspected culprits.

Meaning of Decoy-

A decoy is a person who posing as amenable to the offenders usually keeps ready the means of apprehension. He lures the offender by fanning the sense of trust of the latter, by his conduct, to commit the offence only to entrap the latter.

Meaning of Trap-witness:-

A person who makes himself an agent for prosecution with the purpose of discovering and disclosing the commission of an offence, either before associating with wrong-doers or before the actual preparation of the

offence, is not an accomplice but a spy, detective or decoy whose evidence does not require corroboration, though the weight to be attached to it depends on the character of each case. But a person who is associated with an offence with a criminal design, and extends no aid to the prosecution till after its commission is an accomplice requiring corroboration.

Detectives, decoys or spies will have to be usually employed to catch red-handed the offenders engaged in committing crimes in a secret manner. The authorities after getting credible information regarding the existence of a racket for the commission of an offence, send out their detectives and the detectives mingle with the potential criminals while at the same time keep themselves in constant touch with the authorities and ultimately bring about the desired result of catching the offenders in very act of committing crimes.

But a person who is associated with an offence with a criminal design and extends no aid to the prosecution till after its commission, is an accomplice requiring corroboration. When the crime of conspiracy is complete, members of conspiracy who out of fear or repentance transform themselves into spies and informers do not thereby cease to be accomplices. The act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice.[144]

To one class of persons, apparently accomplices, the rule requiring corroborative evidence does not apply; namely persons who have entered into communication with conspirators, but who, in consequence of either a

[144] Queen Empress V. Javeshram I.L.R. 19 Bom. 363.

subsequent repentance, or an original determination to frustrate the enterprise have disclosed the conspiracy to the public authorities, under whose direction they continue to act with their confederates, till the matter can be so far matured as to insure their conviction. The early disclosure is considered as binding the party to his duty; and though a great degree of disfavour may attach to him for the part he has acted as an informer, yet his case is not treated as that of an accomplice.[145]

It has been held in America that one who only enters into communication with criminal without any criminal intent himself and solely for the purpose of detecting them in a criminal act, is not an accomplice.[146] In any case to be an accomplice, one must be indictable as a participator in the offence[147]

In *Rv Mullins 1848*,[148] MAULE J, laid down as similar test:-

"An accomplice is a person who has concurred in the commission of an offence information so as to prevent those who are disposed to break out from effecting may be an honest man: he may think that the course he pursues is absolutely essential for the protection of his own interests and those of society: he does so, if he believes that their is no other method of counteracting the dangerous designs of wicked men. I can see no impropriety in his taking upon himself the character of an informer. The Government are, no doubt, justified in employing spies; and I do not see that a person so employed deserves to be blamed if he instigates offences

[145] R.v. Despard 1803, 28 St Tr 489, Tays 971.
[146] Com v. Gowning, 4 Gray, 29 M.S. v. Meckean,.
[147] Com v. Wood, 1858, 11 Gray 85 Am.
[148] 3 Cox Cr Cos 526.

no further than by pretending to concur with the perpetrator. Under such circumstances they are entirely distinguished, in fact and in principle, from accomplices and although their evidence is entirely for the jury to judge of, I am bound to say that they are not such persons as it is the practice to say require corroboration".....

"An accomplice is a person who has concurred in the commission of an offence.....spies, that is, persons who take measures to be able to give to the authorities information as it may purchase immunity for his offence. A spy, on the other hand their purpose..... In the case of an accomplice, he acknowledges himself to be a criminal, in the case of these men, they do not acknowledge anything of the kind."

Erle J, in *R v Dowling,*[149] "If he only lent himself to the scheme for the purpose of convicting the guilty, he was good witness and his testimony did not require confirmation as that of an accomplice would do."

Lord Ellenborough in *RV Despard.*[150]

An accomplice may have a motive for giving information as it may purchase immunity for his offence. A spy, on the other hand may be an honest man; he may think that the course he pursues is absolutely essential for the protection of his own interest and those of society. Spies are not such persons as would require corroboration of their evidence. Those persons do not partake of the criminal contamination of accomplices, who enter into "communication with the conspirator with an original purpose of

[149] 1849 3 Cox Cr Cas 509, 515

[150] Persons entering into communication with the conspirators with an original purpose of discovering their secret designs, and disclosing them for the benefit. Of the public do not partake of the criminal contamination of an accomplice."

discovering their secret designs, and disclosing them for the benefit of the public.[151]

The action of a spy and informer in suggesting and initiating a criminal offence is justified by the doctrine which distinguishes the spy from the accomplice.

The test to determine whether a person is a spy or an accomplice has been laid down in the Lahore High Court in *Karim Baksh v. Emperor.*[152] It has to be seen whether the witness had entered into the conspiracy for the sole purpose of detecting and betraying it or whether he is a person who concurred fully in the criminal designs of his coconspirators for a time and joined in the execution of those till he turned on his former associates and gave information to the police.[153]

Mr. Taylor[154] says "one class of persons apparently accomplices, may here by named to whom the rule requiring corroborative evidence does not apply namely, persons who have entered into communication with conspirators but who have disclosed the conspiracy to the public authorities."

In King *v S.N. Rai,*[155] it was laid down that the evidence of a spy does not stand in need of corroboration. It is always for the Judge of fact in each particular case to decide whether it is safe to rely and act upon a decoy witness. The character, position in life and social standing of the

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[151] Queen-Empress v. Javeshram, I.I.R. 19 Bom. 363.
[152] AIR 1928 Lah. 193.
[153] Mangat Rai v. Emperor, AIR 1928, Lah. 550.
[154] Section - 891, Sec. 197, 8th ed. Queen v. Chakraworti 20 (W.R.) Cr. 19.
[155] AIR 1951, Orissa 297 at p. 299.

witness would go a great way in helping the Judge to appreciate his evidence. In *R. v. Dowling*[156], it is held that if a witness merely lent himself to scheme for the purpose of convicting the guilty, he is not an accomplice.

Even applying the rule stated by Niyogi. J. in *B.N. Mukerji v. Emperor*[157] when a case depends mostly if not entirely on the evidence of the police witnesses and spies, their evidence must be subjected to close and critical examination and received with a great deal of caution.

While dealing with evidence of trap-witness the Supreme Court observed in *Barsay v. State of Bombay.*[158]

"We are definitely of opinion that both the Courts had approached the evidence of Lawrence (decoy or spy and agent provocateur) from a correct standpoint. Though Lawrence was not an approver, he could at least be equated with a partisan witness and it would not be admissible to rely upon such evidence without corroboration. It would be equally clear that his evidence in the degree of corroboration required rather than the necessity for it".

It may sometimes be necessary to employ spies or decoys for detection of offences, which cannot be detected in any other way. But the practice is looked upon with much disfavour and in their enthusiasm these men soon degenerate into agent, provocateurs instigating or provoking the commission of crimes. The authorities indicate that if a man makes himself an agent for the prosecution before associating with the wrongdoers or

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[156] (1948) 3 Cox C.C. 509.
[157] I.I.R. (1945) Nag. 176.
[158] A.I.R. 1961 S.C. 1762 at pp. 1780.

before the offence is committed, or if with a view to protect his own interest or that of others pretends to associate with such persons with the object of preventing the commission of an offence by giving timely information to the authorities he is not an accomplice. But however good the motive may be, if such a person or a spy or an informer in the exuberance actually instigates another to commit a crime even if it be for detection of offence or to get the credit of having him arrested, he is an abettor under the penal law and his position cannot be anything other than that of an accomplice.[159] So, when officials lay a trap and incite bribery, the officials and bribe givers would be in the position of accomplices.[160]

The Supreme Court severely condemned the action of the police authorities in supplying the bribe money to the giver in order to entrap accused and secure the commission of the offence. It is the duty of the police to prevent crimes being committed and not to provide the instruments of the offence.[161] In *Ramjanam v S,*[162] Bose J, observed; "Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; and more particularly by those who are the guardians and the keepers of the law. However regrettable the necessity of employing agents provocateurs may be it is one thing to tempt suspected offender to obvert action when he is doing all he can to commit a crime and has every intention of carrying through his

[159] Lakshminarayana v R, 1917 MWN 831; RV Dinkar, 55 A 654; Sv Minaketan, A 1952 Or 267 Nityanand v S, A1954 Pu 89.

[160] In re Chandrashekhara, Cr. P.C. No. 33 of 1950.

[161] Shiv Bahadur v. S. A1954 SC 322: 1954 SCR 1098: Sv Basawan, A1958 SC 300, Ramjanam v S, A1956 SC 643, 651.

[162] A1956 SC 643, 651

nefarious purpose from start to finish, and quite another to egg him on to do that which ha been finally and firmly decided shall not be done. The very best of men have moments of weakness and temptation and even the worst, times when they repent of an evil thought.....". Held, that this was not a case of laying a trap in the usual way, for a man who was demanding a bribe but of deliberately tempting a man to his own undoing after his suggestion about breaking the law had been finally and conclusively rejected with considerable emphasis and decision.

There is a distinction between an accomplice and an informer, and the distinction should be borne in mind because whereas the evidence of an accomplice require corroboration, that of an informer does not. An accomplice is a genuine offender; but if a person enters into a conspiracy for the sole purpose of detecting the offenders and bringing them to book, he cannot be called an accomplice. Such person is a mere informer and his evidence maybe accepted without corroboration.[163] The rule requiring corroboration does not apply to informers, i.e. person who have joined in, or even provoked or instigated, the crime as police spies,[164] as the object of the instigation in such cases is not the preparation of the offence, but the detection of it, not the transgression of law, but the securing of evidence for the enforcement of public justice.[165] The rule requiring corroboration does not apply also to a person who, though he did not enter the conspiracy with an original determination to frustrate the enterprise, and was, therefore, originally a genuine confederate of the conspirators, has in

[163] Mohanlal Mulchand v. E., 226 IC 276
[164] R. v. Bickley, JP Rep 239.
[165] E.v. Chaturbhuj Sahu, 38 C 96.

consequence of subsequent repentance but before the perpetration of the crime, turned an informer.[166] If, however, such a person betrays his associates only after the commission of the offence, he will be an accomplice.[167] Thus, if the offence charged be that of conspiracy, then, as the crime of conspiracy, is complete the moment there is concerted intention, members of the conspiracy who after such agreement have, out of fear or repentance, transformed themselves into spies and informers, do not thereby cease to be accomplices, and their evidence require corroboration to the same extent and of the same character as the evidence of accomplices.[168] When it is said that the evidence of an informer, unlike the evidence of an accomplice, does not require corroboration, it must not be inferred that his evidence must in all cases be accepted without corroboration; all that is meant is that the evidence of such person is not the evidence of an accomplice and that the Court will not be infringing the rule of practice which requires corroboration of accomplice testimony if it convicts on the evidence of such person. It must not be forgotten that a certain degree of disfavour does attach to the testimony of persons playing the role of spies and informers; and that such evidence must be carefully scrutinized, and the weight to be attached to it will depend upon he character of the individual witness.[169] Similarly, bogus punters sent by the police to lay bets by giving marked currency notes, were held to be accomplices.[170] In the absence of sufficient corroboration by untainted

[166] Taylor, 971; R. v. Despard, (1803) 28 How St Tr 489; Wigmoere, $ 2026 : 16 CWN 1105.
[167] Wigmore, $ 2060; Maohanlal Mulchand v. E., 226 IC 276.
[168] 16 CWN 1105.
[169] Shiv Bahadur Singh v. tate, AIR 1954 SC 322; Bhunesdhwari Pershad v. E., 32 Cr LJ 860.
[170] Hormazdyar Ardeshir Irani v. E., 1948 B 250.

evidence, the evidence of accomplice, informers and decoys should not form the basis of a conviction.[171] Evidence of spies or agents provocateurs has to be judged by the judge of facts in order to find out whether the witnesses by themselves are reliable witnesses.[172]

7. Trap witness:-

There are various types of bribe-givers. There is at one end the unblushing giver, who pays he bribe and gets an advantage, and subsequently gives evidence of some ulterior purpose. He is an accomplice of the darkest hue. At the other extreme is the person who, from the very beginning, has no intention of giving a bribe, but makes a how of doing it, so as to bring the dishonest public servant to book; such a man far from being an accomplice is a good citizen, to be respected and encouraged.[173] Between the two there are many gradations of accomplice hood, and consequent legal infamy and need for more or less corroboration. There is the giver, who goes half-way with the intention of paying, but for some reasons beyond his control thinks it wise or safe to report to the authorities and becomes a witness. He is only a les infamous accomplice than the extreme type. Another, who changes his mind without external pressure, is still technically an accomplice, but not as unreliable as the two other types. Then there is the decoy or the spy, who, with no intention to pay the bribe, makes himself the instrument of the authorities in tracking the dishonest public servant. The professional spy, or decoy, doing this for pecuniary or other advantages, though not an accomplice, is suspect all the same, and

[171] In re, N.P. Sethuram Naidu, 1951, 1 MLJ 586.
[172] Nitya Nand Prem Lal v. State, AIR 1954 Puni 89.
[173] AIR 1957 Ker. 134.

requires corroboration. If, on the other hand, the decoy is not acting for gain but, being himself the victim of the demand, helps the authorities spontaneously from a sense of citizen's duty, he is a reliable and respectable witness.[174] The mere offer of money or illegal gratification to a public servant would not amount to an offence of abetment of bribery, unless that offer is made as a reward for showing that person some favour in exercise of the official functions of the public servant.[175] The evidence of witnesses, not a willing party to the giving of the bribe but only actuated with the motive of trapping the accused, cannot be treated as the evidence of accomplices. It is nevertheless the evidence of partisan witnesses out to trap the accused and cannot be taken at its face value.[176]

A trap witness, who habitually gives bribe to station masters, because he cannot secure the booking of his goods otherwise, is to that extent an unwilling accomplice. But he is a habitual bribe-giver for which offence he expects not to be prosecuted, by shifting the blame on the station masters. He is also interested in the success of the trap, and, for these reasons, he would be biased in favour of the prosecution. Therefore the least that can be said is that he is a partisan witness and that his evidence does require corroboration.[177]

A distinction has to be made in the various kinds of trap for payments of bribe. There may be a case in which a bribe is going to be paid in he normal course of business and, on information being received by

[174] State of Vindhya Pradesh Vs Siva Bahadur Singh 1951 V.P. 17.
[175] AIR 1957 Ker 134.
[176] 1954 SC 322.
[177] In re Vejkataraman Iyer, 1957 Andh. Pra. 441: 1956 Andh. L.T. 256; 1956 Andh. W.R. 288; Pandurang v. State, I.L.R. 1959 Bom. 243: 1959 Cr. L.J. 34: A.I.R. 1959 B. 30.

the police, a trap is arranged for watching this normal course of transaction. No legitimate objection for laying such a trap can be made. But, there may be another case in which it is not the intention of the bribe-giver to pay any bribe, and it is only the police which wants that a bribe should be paid in order that an offence may be staged and detected. It is the kind of trap which has been disapproved in the pronouncements of the various High Courts as also by the Supreme Court.[178]

In *Brannan v. Peek,*[179] Lord Justice Goddard has observed that, unless authorised by an Act of Parliament, no trap can be laid by the police or the magistracy to find out whether a man will commit an offence, and that persons trapping him like that would be accomplices liable for punishment themselves. The learned Chief Justice further observed that "the Court observes with concern and disapproval the fact that the police authority at Derby thought it right to send a police officer into a public house to commit an offence. It cannot be too strongly emphasised that it is wholly wrong for a police officer or any other person to be sent to commit an offence in order that an offence by another person may be detected." With respect to this the Supreme Court observed in *Kamlabai v. State of Maharashtra.*[180] "We have only to substitute the words 'aid an act of prostitution' for 'to commit an offence' and the analogy is complete. In this case, two young men were given money to go to the house of the appellant and also to use that money in rather an improper manner. Manmohan

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[178] State v. Har Prasad Sharma, 1958 All. 334: 1958 Cr. L.J. 586: 1957 A.L.J. 934: 1957 A.W.R. (H.C.) 874.

[179] (1947) 2 AH E.R. 572.

[180] A.I.R. 1962 S.C. 1189.

Anandji Mehta seems to be a person of rather doubtful character and the employment of this class of persons for detection of offences is hardly a credit to anyone.....after saying this we have still to see what is the consequence of the testimony of the witnesses....." "There are two kinds of traps- 'a legitimate trap', where the offence has already been born and is in its course, and, 'an illegitimate trap', where the offence has not yet been born and a temptation is offered to see whether an offence would be committed, succumbing to it, or not. Thus, where the bribe has already been demanded from a man and the man goes out offering to bring the money but goes to the police and the Magistrate and brings them to witness the payment, it will be a 'legitimate trap', wholly laudable and admirable, and adopted in every civilized country without the least criticism by any honest man. But, where a man has not demanded a bribe, and he is only suspected to be in the habit of taking bribes and he is tempted with a bribe, just to see whether he would accept it or not and to trap him, if he accepts it, it will be 'an illegitimate trap' and, unless authorized by an Act of Parliament, it will be an offence on the part of the persons taking part in the trap who will all be 'accomplices' whose evidence will have to be corroborated by untainted evidence to a smaller or larger extent, as the case may be, before a conviction can be had under a rule of Court which has ripened almost into a rule of law. But, in the case of a legitimate trap, the officers taking part in the trap, and the witnesses to the trap, would in no sense be 'accomplices', and their evidence will not require, under the law, to be corroborated as a condition precedent for

conviction though the usual rule of prudence will require the evidence to be scrutinised carefully and accepted as true before a conviction can be had."[181]

Reviewing all the authorities, Ramaswami, J. of the Madras High Court observed in a case: "The authorities indicate that if a man makes himself an agent for the prosecution before associating with the wrong-doer or before the offence is committed, or if with such persons with the object of preventing the commission of an offence by giving timely information to the authorities, he is not an accomplice. But however good the motive may be, if such a person or a spy or an informer in the exuberance of his enthusiasm actually instigates another to commit a crime, even if it be for detection of offence or to get the credit of having him arrested, he is an abettor under the penal law and his position cannot be anything other than that of an accomplice."[182] A trap witness is not an approver but he is certainly an interested witness in the sense that he is interested in seeing that the trap laid by him has succeeded. He could hence be at least equated with a partisan witness, and it would therefore be not advisable to rely upon his evidence without corroboration. Though the Court might reject the evidence of the witness in regard to some events, either because that part of the evidence is inconsistent with the other parts of his evidence, or with the evidence of some disinterested witnesses, still it can accept the evidence given by the witness in regard to the events when the version is corroborated in all material particulars by the evidence

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[181] In re M.S. Mohiddin, 1952 Mad. 561 at 562: 53 Cr. L.J. 1245: (1952) 2 M.L.J. 11: 1952 M.W.N. 220; 1952 M.W.N. (Cr.) 45.

[182] In re M. Rangarajulu, 1958 Mad. 368 at p. 374: 1958 Cr. L.J. 906.

of the other disinterested witnesses. Corroboration must be by independent testimony, confirming, in some material particulars, not only that the crime was committed but also that the accused had committed it; it is, however, not necessary that all the circumstances of the case or every detail of the crime must be corroborated. It is enough, if it relates to the material circumstances of the case and of the identity of the accused.[183]

In *Kesho Pershad v. State*,[184] I.D. Dua, J., observed: "Granting that decoy or trap witnesses may to an extent be considered to be interested inasmuch as they may be inclined to see that their trap succeeds, in the final analysis, however, the necessity of corroboration of evidence from its very nature depends on the facts and circumstances of each case, including, inter alia, the status and caliber of the witnesses and the quality of their testimony. It is, indeed, a rule of caution devised to seek assurance and dispel doubts in regard to the credibility of the evidence and is dictated by judicial experience of the common course of human conduct. No hard and fast rule demanding rigid adherence need or can be formulated to be followed in all cases without considering the background, the totality of circumstances and the intrinsic quality of testimony in each case."

In Brannan Vs Peek,[185] Lord Goddard, G. J., observed- "The court observes with concern and disapproved the fact that the police authority at Derby thought it right to send a police officer into a public house to commit an offence in order that an offence by another person may be detected.....

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[183] E.C. Barsay v. State of Bombay, A.I.R. 1961 S.C. 1762; see also Ambalal Motibhai v. State, A.I.R. 1961 Guj. 1: 1961 (1) Cr. L.J. 50.
[184] AIR 1967 Delhi 57. 69 P.L.R. D 25.
[185] (1947) 2 All E.R. 572.

I hope the day is far distant when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against someone if they do commit offences, they ought also to be convicted and punished for the order of their superior would afford no defence."

This distinction between legitimate and illegitimate trap is brought out in (a) the decision of the Supreme Court in *Ramajanam Singh v. State of Bihar*[186] and (b) the American case in the following extract from *Sundarvadivelu Chetty v. State.*[187]

(a) Their Lordships of the Supreme Court observed:

"Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; and more particularly by those who are the guardian and keepers of the law. However regrettable the necessity of employing agent provocateurs maybe (and this is unfortunately often inevitable if corruption is to be detected and bribery stamped out), it is one thing to tempt a suspected offender to overt action when he is doing all he can not commit a crime and has every intention of carrying through his nefarious purpose from start to finish, and quite another to egg him on to do that which it has been finally decided shall not be done. The very best of men have moments of weakness and temptation, and even the worst have times when they repent of an evil thought and are given an inner strength to set Satan behind them; and if they do, whether it

[186] A.I.R. 1956 S.C. 643.
[187] 1955 M.W.N., 26: Cr. 14: A.I.R. 1956 S.C. 476.

is because of caution, or because of their better instincts, or because some other have shown them either the futility or the wickedness of wrong-doing, it behaves society and the State to protect them and help them in their good resolve; not to place further temptation in their way and start afresh a train of criminal thought which had been finally set aside."

They held, that this was not a case of laying a trap in the usual way, for a man who was demanding a bride but of deliberately tempting a man to his own undoing after his suggestion about breaking the law had been finally and conclusively rejected with considerable emphasis and decision.

(b) The evidence of a trap-witness which normally cannot be treated as the evidence of an accomplice becomes so when the trap-witness is actually the instigator of the offence and this is well brought out in the following American decisions. The fact that an abscene paper was sent in response to a decoy letter is no defence to an indictment for mailing such publication.[188] It is no defence sending a letter giving notice where obscene pictures may be obtained in violation of U.S. Rev. State that the letter was an answer to enquiry under an assumed name from a detective or Government official.[189] The fact that a letter was a decoy is no defence to an indictment of a railway postal clerk for embezzling and stealing it when it contained money.[190] The fact that officers or employees of the Government merely afford opportunities or facilities for the commission of

[188] Rosen v. united States, 40 L. Ed. 606; Andrews v. United States, 40 I. Ed. 1027 ; Price v. United States, 41 Ed. 727.
[189] Grimm v. United States, 39 L. Ed. 550.
[190] Montgomery v. United States, 40 L. Ed. 1020.

an offence does not defeat a prosecution therefore.[191] A conviction for possession and selling intoxicating liquor in violation of the National Prohibition Act is improper where the acts alleged to constitute the offence were committed solely upon the instigation of a prohibition agent. Entrapment is the conception and planning of an offence by an officer and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer. This was the separate opinion of Roberts. Brandies, Stone, JJ. in *Sorrells v. United States.* It is not the duty of a Government official to incite to and create crime for the purpose of prosecuting and punishing it.[192]

In *Major Barsay v. State of Bombay,*[193] the Supreme Court emphasized on the proposition that though a trap witness is not an approver, he is certainly an interested witness in the sense that he is interested to see that the trap laid by him succeeded. But the evidence of a trap-witness is not a tainted one and that it would only make difference in the degree of corroboration required rather than a necessity for it.[194]

As a rule of prudence, the evidence of a trap-witness connecting the accused with the crime of bribery, where against allegation of ill-will towards the accused are made, requires corroboration. The corroboration may be by circumstantial evidence connecting the accused with the crime.[195]

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[191] Serrells v. United States, 77 L. Ed. 413.
[192] Butts Vs United states, 18 A.L.R. 43
[193] AIR 1961 SC 1962.
[194] 1968 Cr. LJ 925- 926
[195] Prakash Chandra Jain V. S. State, 1968 Cr. L.J. 391-395.

8. Decoy witness:-

A decoy is one who is employed to allure others into a share of one who is trained to entice others into a trap.

A distinction has to be drawn between an accomplice and a decoy witness, the former being a person who joins another with an intention of aiding the commission of an offence and the latter who is instrumental in provoking the commission of the offence with the object of discovering the offence and detecting the offender.

"The case of a pretended confederate who as detective, spy or decoy, associates with the wrongdoers in order to obtain evidence, is distinct from that of an accomplice, although the distinction may sometimes be difficult of application." A mere detective or decoy or paid informer is therefore not an accomplice; nor an original confederate who betrays before the crime is committed; yet an accessory after the fact would be, if he had before betrayal rendered himself liable as such.[196]

A decoy witness is not always or necessarily an accomplice. He would be an accomplice if he induced the acceptor of the bribe to do an act for him or to show him some concession or favour on receipt of the bribe. He would fall out of the accomplice class if his intention is not to secure any benefit for himself by offering the bribe, but to have the offender disclosed and brought to book In *Emperor v. Chatur Bhuj Sahu*[197], a Division Bench held that-

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[196] Wigmore, S. 2060.
[197] 8 ILR 38 Cal. 96.

"a person who makes himself an agent for the prosecution with the purpose of discover in and disclosing the commission of an offence, either before Association with wrong-doers or before the actual perpetration of the offence is not an accomplice, but a spy, detective or decoy whose evidence does not require corroboration."

But a person who is associated with an offence with a criminal design, and extends no aid to the prosecution till after its commission is an accomplice requiring corroboration.[198] Where a witness has acted as a decoy that is not sufficient to reject his testimony. The rule of prudence requires that evidence of a decoy witness must find some corroboration in material particulars.[199]

The position of a spy or a decoy witness being different from that of an accomplice, it is not always necessary that his evidence, before it is acted upon should be corroborated in material particulars. But then each case must depend upon its own merits and it cannot also be lost sight of that a spy enters into a design with the police to entrap the accused and as such his partiality for the prosecution is a factor which can hardly be ignored. His character, position in life and social standing would go a long way in the matter of appreciation of his evidence.

Although the testimony of a spy does not need corroboration in order to be acted upon it is entirely for the Judge of fact to decide in each particular case what weight he will attach to this kind of evidence, the question depending upon the character of each individual witness.

[198] State v. Bashambar Dayal A.I.R. 1953
[199] State of Gujarat vs Bai Radha (1968) 9 Guj. L.R. 278

The Prevention of Corruption Act contains special provisions by which the burden of proof, ordinarily imposed on the prosecution in a criminal case, is placed on the accused and the accused are allowed to give evidence if they choose. When the prosecution evidence is that of persons who provided and paid the bribe after arranging for the time and place therefore on a previous consultation all that the accused may ask for is that the evidence should be scrutinized with care and accepted with caution. Receipt of bribe by an officer, being an act in accordance with a highly personal and confidential arrangement with the giver in the house of the officer himself, where the utmost precaution for secrecy is naturally taken the absence of evidence of any other person in support of the bribe-giver's statement about the payment to the accused is no ground to disbelieve him. Even if corroboration as in the case of an accomplice, is necessary it is enough if there is independent evidence in support of his version in certain material particulars and such evidence on every point of detail spoken to by the witness is not required.

The evidence of a spy or a decoy witness though admissible in evidence and may be acted upon, the value to be attached to that evidence will depend upon the character of the person employed. Where the spy or the police officer goes beyond the limit of collecting evidence and instigates or solicits the commissions of a crime, he would be guilty of abetment. The Courts should therefore a matter of prudence require corroboration of their evidence like that of an accomplice.

If a police officer receive information that an offence has been committed or is about to be committed and engages spies to witness the commission, he acts as mere detective: that may be necessary in the interests of justice to enable him to secure evidence. This can be justified only on the ground that he is engaged in the detection of a crime. But if he suggests or induces the commission of a crime and instigates other offenders while in the act, he is no better than an agent provocateur. His conduct is not only reprehensible but also criminal. His object is not detection but commission of a crime so that he may prefer a charge for the offence committed at his instigation. By inviting or inducing another to commit an offence he becomes an accomplice, for he participates in the commission of the criminal act. Officers sworn to maintain law cannot shed their character as such and break the law, however laudable the motive may be. The end certainly does not justify the means. The path to crime may be paved with good intentions it is nonetheless a crime. To encourage resort to doubtful means because the end is justified would be to defeat the purpose of the law, rather than promote it.

When person instigates another to commit crime with object of catching him in act of committing crime, it was held that his evidence must be viewed with caution even if he is not to be regarded as accomplice in the strict legal sense.

From S 109, Illus (a) and S. 161 Illus (a) Penal Code, it is clear that mere offer of money or illegal gratification to a public servant would not amount to an offence of abetment of bribery unless that offer is made as a

reward for showing that person some favour in the exercise of the official functions of the public servant. That is to say, there must be the necessary criminal intention on the part of the offer. In the case of a trap witness engage for the purpose of decoying a public official by offering him marked currency notes, this essential criminal intention is wanting.

The question as to whether a spy or decoy-witness is to be branded as an accomplice depends on the criminality of the acts done by him and the nature of the offence for the detection of which he was employed. A person engaged by the police to give marked currency notes to a public officer with a view to detect the offence of bribery is not an accomplice, because he lacks the necessary criminal intention. Nor does the C.I.D. Inspector become an abettor by his conduct in laying out the trap and executing the same.

Every case of bribery in which decoys are used must be decided on its own peculiar facts and no general principles as to corroboration can be laid down. Informers, that is, persons who have joined in, or even provoked the crime, as police spies have not been regarded as accomplices.

The evidence of witnesses even if they are spies, has to be judged by the Judge of fact in order to find out whether the witnesses by themselves are reliable witnesses. People who offers bribe and another person goes with him are clearly witnesses who are "agents provocateurs" and are such whose evidence needs corroboration.

In a bribery case under S. 161 Penal Code, the evidence of the bribe giver or a decoy witness is no better than that of an accomplice and

requires corroboration that the money was received by the accused person for an illegal purpose. In any case, the evidence of such a witness should be carefully examined before it can form the basis of a conviction. When the evidence of some of the prosecution witnesses is inconsistent with that of the bribe giver and other witnesses and also supports the defence story that the currency note was put in the accused's pocket without his knowledge, the prosecution case is not free from doubt and the possibility of the innocence of the accused cannot be ruled out. The accused is therefore entitled to benefit of doubt.

Where in a prosecution under Sec. 161 I.P.C. against a Station Master for accepting a bribe for supplying wagons to the complainant, the whole prosecution story is based upon the tainted evidence of decoy witness who are either accomplices or spies of the police in a trap set up for the accused, it is unsafe to convict the accused unless there is some independent evidence, either direct or circumstantial, to prove his guilt.

Where the accused in his explanation to the charge says that the marked currency notes found in his possession were handed over to him by the complainant for safe custody and there is no independent corroborative evidence of the prosecution story that the money was accepted as a bribe, so that the prosecution story that the money was accepted as a bribe, so that the prosecution fail to establish the guilt of the accused beyond all reasonable doubt, the conviction of the accused under beyond all reasonable doubt, the conviction of the accused under Section 161 I.P.C. cannot be sustained.

Evidence of spy requires corroboration to the same extent as that of accomplice. A punter cannot be considered to be an independent witness. Such a witness being sent by the police is obviously a witness under their influence. Hence the evidence of such a witness requires corroboration in order to base a base a conviction thereon.

The evidence of the person, whom the investigating officer sends to offer bet at a place where gambling is alleged to be carried on, should normally be accepted with caution unless it is corroborated by other independent evidence.

When a case depends mostly, if not entirely, on the evidence of the police witnesses and spies, their evidence must be subjected to close critical examination and received with a great deal of caution.

The necessity of employing spies of decoys for detection of offences in some cases can not be disputed inspite of that this practice is not looked upon with much favour because in their enthusiasm these men soon degenerate into agent provocateur instigating or provoking the commission of crimes.[200]

The rule of prudence requires corroboration in materials particular of his testimony though decoy witnesses are different from that of an accomplice, but they will be interested in seeing that their trap succeed.[201]

The case against the accused mainly rested upon the testimony of an informer who admitted that after becoming cognizant of the crime, he kept quiet about it for six days and it was urged on behalf of the accused, that

[200] In re M. Gangarajalu AIR Mad 368: 1958 Cr LJ 906
[201] Khaso V. S AIR 1967 Del 51; 1967 Cr LJ 1138.

even if not an accomplice, his evidence ought not to be acted upon except to the extent to which it was corroborated by independent testimony. Held that he was not an accomplice but his testimony is such as not to justify a conviction except where he is corroborated. The statement of an accused under Section 313, new Criminal Procedure Code who has been tried jointly with another accused is exculpatory and cannot be used as evidence against the other accused. It is so used to strengthen or corroborate the prosecution evidence, the conclusion arrived at by it is illegal.[202]

9. Partisan witness:-

In the case of evidence of an accomplice no conviction can be based on his evidence unless it is corroborated in material particulars, but as regards the incidence of a partisan witness it is open to a Court to convict an accused person solely on the basis of that evidence if it is satisfied that evidence is reliable. But it may in appropriate cases look for corroboration.[203] In a murder trial the evidence on behalf of the prosecution of the son or daughter of the victim cannot be discarded on the mere ground of their close interest in the deceased.[204] In cases of communal disturbances the evidence given by witnesses should not be discarded only

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[202] State of Madhya Pradesh Vs Ranjeet Singh, 1961 MPC 778.

[203] Bhabyorasad v, State of Gujarat, (1968) 71 Bom LR 43 SC. State of Bihar v. Basawan Singh, AIR 1958 SC 500. A testimoney cannot be rejected only on the ground that the witness was interested and inimical. Babu v. U.P., AIR 1980 SC 443; See further Ram Ashrit v. Bihar, AIR 1981 SC 942 which explains the situation where all witnesses are interested : State of Rajasthan v. Kolko, AIR 1981 SC 1390. An interested and related witness see State of Rajasthan v. Kalki, AIR 1981 SC 1390. An interested witness is not like approver, only more precaution is necessary. State of U.P. v. Ballabh Das, AIR 1985; A son of the deceased cannot be disbelieved. Namhu v. U.P. AIR 1977 SC 2096; Gali Chand v. Rai, AIR 1974 SC 775.

[204] Bhpender Singh v. State of Pun. AIR 1968 S.C. 1438.

on the ground that the persons who gave such evidence belong to one particular community and as such as partisan or interested witnesses.[205]

The correct rule is that if any of the witnesses are accomplice who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested. The evidentiary value of the testimony of a partisan or interested witness is distinct from that of an approver or accomplice. While the evidence of an approver or accomplice requires corroboration there is no such rule of law that the evidence of a partisan or interested witness cannot be accepted without corroboration.

In the case of partisan witnesses, the corroboration that may be looked for is corroboration in general way and not material corroboration as in the case of the evidence of accomplices.[206]

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[205] Manilal v. State AIR 1969 Orissa 176.
[206] Bhanu Prasad Hari Prasad Daue Vs state of Gujrat, AIR 1968 SC/323