International Journal of Pure and Applied Mathematics
Volume 120 No. 5 2018, 997-1006
ISSN: 1314-3395 (on-line version)
url: http://www.acadpubl.eu/hub/
Special Issue

http://www.acadpubl.eu/hub/

A STUDY ON ACCOMPLICE WITNESS AND ITS ADMISSIBILITY AS EVIDENCE IN INDIA

[1] Arvind , [2] Ms Roja.

[1] Student, BA.LLB (HONS) , 4TH YEAR, Saveetha School Of Law, Saveetha University, Saveetha institute of medical and technical sciences, Chennai, Tamilnadu, India,

[2] Assistant professor of Law, B.A,B.L,LLM,PG.CFIS., Saveetha School Of Law, Saveetha University, Saveetha institute of medical and technical sciences, Chennai, Tamilnadu, India,

[1]arvindbryant12@gmail.com, [2]rojak.ssl@saveetha.com,

ABSTRACT:

Every law which is true is true always and forever, but upon the other hand every law emphatically is an abstraction. And hence all law are true only in abstract. It remains perfectly true, but is inapplicable where the conditions, which it supposes, are absent.

The law is commonly divided into substantive law, which defines rights, duties and liabilities, and adjective law, which define the procedure, pleading and proof by which the substantive law is applied in practice. "Rules regarding judicial evidence may be generally divided into those relating to the *quid probandum* or thing to be proved and those relating to the *modus probandi* or modes of proving.

OBJECTIVES:

To look into the provisions of accomplice witness

To study various case laws relating to it

To analyse the limitations of the sections

HYPOTHESIS:

RESEARCH METHODOLOGY:

This is a doctrinal research and all data collected is secondary data.

INTRODUCTION:

The word EVIDENCE signifies in its, original sense, the state of being evident ie plain, apparent or notorious. The evidence of a fact is that which tends to prove it. Some thing

which could satisfy an enquirer of the fact's existence or non existence. Evidence is the most important part of a trial. It can either convict the accused or set them free. In its broadest sense evidence is defined by Bentham as "any matter of fact, the effect, tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative of the existence of some other matter of fact.

CHAPTER 1: BACKGROUND AND SCOPE

WHO IS AN ACCOMPLICE?

The Indian Evidence Act, 1872 does not lay down the definition* > An accomplice is a person who has concurred in the commission of an offence10 and the maxim *"participes criminis*11* is included in the term. An accomplice is a person who is guilty-associate in crime or who sustains such a relation to the criminal act that he can be jointly indicted with the principal criminal. A witness concerned may not confess to his participation in a crime and may deny his being an accomplice but it is for the courts to decide on a consideration of the entire evidence whether he is an accomplice. The burden of proving that an accomplice is definitely on the party alleging it for the purpose of invoking the rule while the duty to bring the accomplice character of the evidence to the notice of the court rests upon the prosecution and the court needs to believe by a preponderance of probabilities.14 The essential prerequisite is participation in crime willfully and this can be done in various ways.15 The term in fullness includes all persons concerned in the commission of the crime, whether they in the strict legal aptness are principals in the first degree16 or second degree [1T]merely are accessories before or after the commission.20 In India two categories of offenders are recognized- persons who are principals and abettors or instigators and the term accomplice includes both of them i.e. the principal and the privy.

WHEN IS AN ACCOMPLICE COMPETENT WITNESS?

Section 118 of the Indian Evidence Act speaks about competency of witness. Competency is a condition precedent for examining a person as witness and the sole test of competency laid down is that the witness should not be prevented from understanding the questions posed to him or from giving rational answers expected out of him by his age, his mental and physical state of disease. At the same time Section 133 speaks about competency of accomplices. Further more in case of accomplice witnesses, he should not be a co-accused under trial in the same case and may be examined on oath.

Let us consider the following propositions suggested by courts. First, courts have opined that such competency, which has been conferred on him by a process of law, does not divest him of the character of an accused and he remains a*particips criminis* and this remains the genesis of the major problem surrounding the credibility of such evidence. Secondly, an accomplice by accepting a pardon under Section 306 CrPC becomes a competent witness and may as any other witness be examined on oath, the prosecution must be withdrawn and the accused formally discharged under Section 321 of the Criminal Code before he would be a competent witness but even if there is omission to record discharge, an accused is vested with competency as soon as the prosecution is withdrawn. Thirdly, Article 20(3) of the Indian Constitution says that no accused shall be compelled to be a witness against himself. But as a co- accused accepts a pardon of his free will on condition of a true disclosure, in his own interest, and is not compelled to give self-incriminating evidence, the law in Section 306 and 308 of CrPC is not affected and a pardoned accused is bound to make a full disclosure and on his failure to do so he may be tried of the . offence originally charged and his statement may be used against him under Section 308. This suggests that a *participes criminis* continues to be the same and if so then despite the fact that his involvement has been pardoned by a judicial act can be used for self-incrimination and to expect a "true and full disclosure" is unreal.

Regarding the provisions of such a witness, under Indian Evidence Act, two Sections namely 114(b) and 133 have been enacted but both seems to be against each other. At the outset, it has been proposed that incorporation of Section 133 when read in the light of Section 118 speaking about the competency of witness does not justify the inclusion of the former in the Act. Further Section 134 which deals with the number of witnesses in a case negates the second part of Section 133 which narrates that the uncorroborated testimony of an accomplice is not illegal. But the inclusion of the section attains a highly elevated status, for without inclusion of this specific section, there existed a dominant chance of the law being misunderstood or misapplied. Section 114, illustration (b) creates a cloud of doubt as to the competency of the accomplice witness and it seems significant when seen from this perspective that inclusion of Section 133 was required to settle a sound basis and caution that merely because the testimony of the accomplice is uncorroborated does not make it illegal. The difficulty in understanding the combined effect of the two sections proceeds largely on the account that their positioned under different Chapters in the Act. It clearly emerges that both-rule laid down in illustration (b) to Section 114 which deals with

presumptions of various kinds and the caution laid down in Section 133 are part of the same rule and neither can be ignored in the exercise of judicial discretion, except in cases of a very exceptional nature. The application of the rules together emerges as a rule of practice that has assumed the force of rule, of law28 that evidence of the accomplice would be accepted with corroboration. *Why this "practical rule" emerged?* This is an outcome of experience that an accomplice is unworthy of credit for the following:

1. A bare and segregated perusal of Section 133 may instigate the young magistrates and judges at the lower courts to base their convictions on the uncorroborated testimony of accomplice witness on the presumption that the legislature intended to encourage such convictions and such testimonies.
2. This rule emerged in order to ration the threats that flow from necessity for administration of justice for an accomplice witnesses are a practical mandate as matter of necessity nevertheless they are infamous and the most dangerous forms of witnesses to base a conviction.
3. An accomplice is a 'partner in guilt' and is definitely an infamous witness and inevitably distrust flows into what he testifies calling for fullest corroboration in material particulars for a conviction. He may without this burden simply testify to save himself by procuring conviction for others.

CORRABORATION OF A WITNESS

What is corroboration?

Corroboration means independent testimony. Lord Abinger said- "In my opinion that corroboration ought to consist in some circumstance that affect the identity of the party accused. A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only truth of that history, without identifying the persons, that is really no corroboration at all. If a man were to break upon a house and put a knife to your throat, and steal your property, it would be no corroboration that he had stated the facts correctly, that he had described how the person did put the knife to the throat and steal the property. It would not at all tend to show that the party accused participated in it.....The danger is that when a man is fixed, and know that his guilt is detected, he will purchase immunity by falsely accusing others." Independent corroboration does not mean that every detail must be corroborated by independent

witnesses and all that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true. That is to suggest that supposed in a case of conspiracy, if there is corroboration with regards to the general facts of the existence of a conspiracy and also of participation in it of any particular accused, corroboration of the specific acts is unnecessary unless the evidence of the accused is intrinsically subject to suspicion. Amount of corroboration cannot be laid down in specific as it depends upon the circumstances; particularly on the crime charged and the degree of the accomplice's complicity.

The evidentiary value of the statements of a witness depends upon the nature of statements, substance of the testimony and appreciation of the testimony by the court. Even a single statement may be treated as sufficient evidence, while a long narration by the witness, may not even be treated as a fact. This, however, depends upon the. value of statements of a witness, which has thus emerged after cross-examination and corroboration.

It can further be said that mere becoming witness is not sufficient; the witness must be of credible and reliable characteristics and qualities. It has been rightly said by Robert Browning:

> *"Oh the little more, and how much it is! And the little less, and what worlds away. "*

"Credibility" and *"reliability"* are two best qualities of the personality of a person which provides him or her high quality of reputation, regard, respect, honour and the likes in the society and provides a passport to go anywhere, anytime in the family, society state and even in the world. An attempt has been made in this chapter to discuss the credibility and reliability of an accomplice. It can rightly be said that in considering the weight and value of the testimony of any witness, the appearance, attitude, and behavior of the witnesses, the interest of the witness in the outcome of the suit, the relation of the witness to the parties, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness's statements, and all other facts and circumstances in evidence may be taken into consideration. Thus, the testimony of any witness may be given such weight and value, as the testimony of such witness is entitled to receive.

LIMITATIONS OF THE STATUTE:

The established principle of Criminal Jurisprudence is that the responsibility or exemption from criminal liability to a person should always be made in accordance with the procedure established in criminal law for the time being in force. Thus, though an accomplice has become entitled for exemption, from criminal liability, yet, the pardon to him should be made according to the provisions of Constitution (Art. 72 and Art. 161) and Code of Criminal Procedure 1973 (Sec. 432 to 435), in this regard. Whether inspite of committing the crime heinous or simple, pardoning him would give a bad or good message in the society and after- effects of doing so, is a matter of deep study and analysis which the researcher has undertaken in her project of research.

In this thesis, an effort has been made to deal and discuss the procedure for pardon and prosecution of an accomplice when he has violated the terms and conditions of granting him pardon under Sections 306 to 308 and 432 to 435 (A) of the Code of Criminal Procedure 1973. The provisions under Section 337 of the Code of Criminal Procedure 1898, have also been discussed as many cases were decided under these sections before the enforcement of the new Code of Criminal Procedure, 1973.

This accomplice is called an approver and his evidence is called State evidence. When a criminal is admitted to bear testimony against his accomplice he is then said to turn "State evidence". Apart from the information, which is obtained through this course in certain types of crime, the only direct evidence that can be offered under the circumstances is that of an accomplice. Therefore the reason for granting a pardon is to obtain the evidence of a person supposed to be involved in an offence, in the trial of another person involved in the same offence, in the trial of another person involved in the same offence. As held by the Punjab and Haryana High Court in *Sarbijit Singh* v. *State ofPunjab,45* the object of pardon is that the fear of, prosecution is removed. A person to whom parden is granted though privy to the offence may feel free to give true evidence and make a full disclosure of the event about the crime. The tender of pardon is in other words, quid pro quo. The very object of the provisions contained in Sec. 337 (1) of the old Cr. P^C. is to allow pardon to be tendered in cases where a grave offence is alleged to have been committed by several persons so that, with the aid of the evidence of the person pardoned, the offence can be brought home to the rest.46 So the subsequent stopping of the trial for some reason will not affect the pardon already granted. In *re Dagdoo Bapu,47* an accomplice was given a conditional pardon under Section 337, old Cr. P.C. The principal offender, having absconded, the trial could not go on. The trying Magistrate referred the

case to the High Court to have the order of pardon cancelled on the ground that it was invalid, as it was not tendered for the purpose of an inquiry, but for the purpose of securing evidence under Section 512, old Cr. P.C. Held, that there was no ground for revision of the Magistrate's order under Section 337, old Cr. P.C., inasmuch as the principal offence was under inquiry and in order to secure the approver's evidence as to the offence, a pardon was tendered and the proceeding under Section 512 was only ancillary to that inquiry.

CONCLUSION

The Courts in this country have by harmoniously reading Section 114(b) and Section 133 together laid down the guiding principle with respect to accomplice evidence which clearly lays down the law without any ambiguity. This principle which the courts have evolved is that though a conviction based upon the uncorroborated testimony of an accomplice is not illegal or unlawful but the rule of prudence says that it is unsafe to act upon the evidence of an accomplice unless it is corroborated with respect to material aspects so as to implicate the accused. This guiding principle though very clear is often faced with difficulties with respect to its implementation. While implementing this principle different judges might have different levels of corroboration for accomplice evidence and thus with no hard and fast rules relating to the extent and nature of corroboration an element of subjectiveness creeps in which can result in injustice.

Accomplice witness can be a competent witness by fulfilling certain condition. One necessary condition for being Accomplice Witness is that he must be involved in the crime. So, the Accomplice Evidence can be taken as a strong evidence when it is subject to corroboration.

REFERENCES:

Books Referred:

1) Dr. V. Krishnamachari, Law of Evidence, (Hyderabad: S.Gogia &Co.), 2010

2) Singh Avtar, Priniciples of the Law of Evidence, (Allahabad : Central Law Publications), 2007

3) Dhiraj Lal & Ratanlal, TheLaw of Evidence,(Nagpur : Wadhwa & Company), 2008

4) Tandon M.P., Indian Evidence Act, 1872, (Faridabad : Sri Sai Law Publication), 2006

5) Sarathi P. Vepa, Law of Evidence,(Lucknow : Eastern Book Company), 2006

6) Myeni S.R., The Law of Evidence, (Hyderabad : Asia Law House), 2008

7) Basu S.D., The Law of Evidence, (Faridabad : Allahabad Law Agency), 2010

Websites Referred:

1) http://www.airwebworld.com/articles/index.php?article=900 – A Critical Analysis Of Accomplice Witness In India

2) http://www.oppapers.com/essays/A-Critical-Analysis-Of-Accomplice-Witness/507650 – An Essay on A Critical Analysis Of Accomplice Witness In India

3) http://legal-dictionary.thefreedictionary.com/Accomplice+Witness – Legal Definition of Accomplice Witness

4) http://legalsutra.org/507/accomplice-evidence/ – Accomplice Evidence

Cases Referred:

1) Jagannath v. Emperor, AIR 1942 Oudh 221

2) Francis Stanly v. Intelligence Officer N.C.B., Thiruvananthapuram, 2007 Cri. Lj 1157 (SC)

3) K. Hasim v. State of Tamil Nadu, 2005 Cri. Lj 143 (SC)

4) Subhash Chandra Panda v. State of Orissa, 2001 (4) Crimes 367 (DB) (Ori)

5) C.R. Mehta v. State of Maharashtra ,1993 Cr.Lj 2863 (Bom.)

6) Sarwan Singh v. State of Punjab, AIR 1957 SC 637

7) R.K Dalmia v. Delhi Administration, AIR 1962 SC 1821.

8) Janendra nath Ghose v. State of West Bengal, AIR 1959 SC 1199

9) Raghubir Singh v. State of Haryana, (1974) 4 SCC 560

10) Lachi Ram v. State of Punjab, AIR 1967 SC 792

11) Dr.Lakshmi T and Rajeshkumar S "In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes", International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.

12) Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.