

## THE CONFUSION AND FINALITY- ACCOMPLICE EVIDENCE IN INDIA

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### Abstract

Although the credibility and dependability of evidence presented by an accomplice are sometimes questioned, accomplice evidence has significance in India. Numerous court rulings uphold accomplice laws and highlight the need of corroboration. In this instance, the situation remained unclear for almost a century. The established consensus was that the court might either rely on the accomplice's evidence alone or seek corroboration. This leads to a lack of uniformity in the legislation concerning proof of accomplice. This uncertainty was eliminated by the new Bharatiya Sakshya Adhiniyam, 2023, which made accomplice evidence corroboration essential. The researcher's emphasis in the present study is how new changes in the BSA is going to affect the acceptance of evidence.

### Introduction

The general rule that evidence collection, usually by the police and preservation, usually by the police and the court, shall be governed by the Bharatiya Sakshya Adhiniyam ( hereinafter BSA) rules and the Indian Evidence Act. These days, the multidisciplinary process of using scientific evidence in criminal cases involves science, law, and technology. Complicity evidence is one of the most important types of evidence when it comes to "determining the guilt or the innocence of the accused"<sup>1</sup>. In several instances, the offender was found guilty by the hierarchy of courts using accomplice testimony<sup>2</sup>. One kind of circumstantial evidence that may be used in court to determine a defendant's guilt or innocence is called accomplice evidence<sup>3</sup>.

### Meaning of Accomplice

Wharton's Law Lexicon<sup>4</sup> defines "*an accomplice as one concerned with another or others in the commission of a crime*"<sup>5</sup>. An accomplice is a partner in crime. In another definition it mentioned

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Moenssens AA "Novel scientific evidence in criminal cases: S words of caution. 84 J. Crim. L. & Criminology 1 (1993-1994)"

Available on 'https://heinonline.org/hol-cgi bin/get\_pdf.cgi?handle=hein.journals/jclc84&section=8', Accessed on January 2024.

<sup>2</sup> "Dharam Pal and others v State of Haryana and another, 2013 Indlaw SC 455, (2014) 3 SCC 306; Harbhajan Singh & Anr. v State Of Punjab & Anr., 2009 Indlaw SC 933, (2009) 13 SCC 608; Hardeep Singh; (2) Manjit Pal Singh v State Of Punjab And Another"<sup>3</sup>s, 2008 Indlaw SC 1726, (2009) 16 SCC 785.

<sup>3</sup> Blakey WJ, "An Introduction to the Oklahoma Evidence Code: Relevancy, Competency, Privileges, Witnesses, Opinion, and Expert Witnesses"

Available on " https://heinonline.org/hol-cgi-bin/get\_pdf.cgi?handle=hein.journals/tlj14&section=18"

<sup>4</sup>Law lexicon by Ramanth Iyer, (3rd ed)

<sup>5</sup> (1936) 38 Bom LR 1101

as “who in some way or other is connected with the offence presented before the court, or who makes admission of facts revealing the conscious hand in the commission of the offence is an accomplice”<sup>6</sup>. The term 'accomplice' refers to a person or companion in crime who is intimately associated with the activities of his confederate<sup>7</sup>. Furthermore, a person who disagrees with exposing the crime and was present at the time of commission is considered an accomplice<sup>8</sup>. When a witness sits silently and observes the alleged offence from start to finish, he or she acts as an accomplice<sup>9</sup>. ‘A person is not an accomplice if he did not knowingly assist in the conduct of the crime, allowing him and the other accused to be jointly charged for the illegal act’<sup>10</sup>. A person cannot be considered an accomplice in a crime if he was just present during the conduct of the crime for which the accused is charged or if he made no effort to halt it or divulge information about the act<sup>11</sup>. All accessories, before the fact, are not accomplices if their role is restricted to knowing that the crime will be done; nevertheless, if they help prepare the crime, they are considered accomplices. The test to ‘determine whether a person is an accomplice or not is very subjective. It varies from case to case.

In *Subash Chandra v. Sate of Odisha*<sup>12</sup>, “A rustic village labour who acted according to his master's advice under threat of death is not disclosing for some time the offence committed, by his mater but thereafter he disclosed the same to the informant, the police and before the Magistrate, led that he cannot be called as an accomplice”

A witness was someone who assisted the criminals in keeping their eyes out to see whether the police were coming or not can also be called as an accomplice<sup>13</sup>. In *KarimKunju v. State*<sup>14</sup>, “A Police Officer, by posturing himself to be the son of a rich planter, said that he would exchange his authentic currency notes for counterfeit notes, which he wanted to distribute amongst his labourers towards their wages. Because of the reason that this was an unlawful trap, the PO and his other associates were held to be accomplices, and their evidence could not be admitted without successful corroboration”

‘The evidence of an accomplice’ must corroborate both the facts of the crime and the identity of the co-accused<sup>15</sup>. Corroboration does not always need direct evidence that the accused committed the crime; circumstantial evidence of his involvement in the act may suffice<sup>16</sup>. The judge should warn the jury of the dangers of convicting a criminal based on an accomplice's unconfirmed

<sup>6</sup> Jagannath v R. 17 Luck 516: A1942 O 221: R.v. Burn 11 Bom LR 1153: 10 Cr LJ 530.

<sup>7</sup> Nanak Chand v The State Of Punjab, 1955 Indlaw SC 66, AIR 1955 SC 274, State v Jethanand, (1968) 9 Guj LR 832.

<sup>8</sup> Willie (William) Slaney v State of Madhya Pradesh, 1955 Indlaw SC 80, AIR 1956 SC 116; State v Ram Avtar, AIR 1955 All 138.

<sup>9</sup> Mavythalam v Emperor, AIR 1934 Mad 721.

<sup>10</sup> Pramatha Nath Taluqdar v Saroj Ranjan Sarkar, 1961 Indlaw SC 411, AIR 1962 SC 876;

<sup>11</sup> Mohd. Husain Umar Kochra etc. v K. S. Dalipsinghji and another, 1969 Indlaw SC 1, (1969) 3 SCC 429,

<sup>12</sup> 2001 Cr LJ 4108

<sup>13</sup> Kannakaprambil Kesvan and Others v State of Kerala, 1979 Indlaw SC 418, (1979) 4 SCC 312

<sup>14</sup> 1972 Cr LJ 292.

<sup>15</sup> “Noor Mohammad Mohd. Yusuf Momin v State Of Maharashtra, 1970 Indlaw SC 87”, (1970) 1 SCC 696

<sup>16</sup> “Ziyauddin Burhanuddin Bukhari v Brijmohan Ramdass Mehra & Ors”, 1975 Indlaw SC 179, (1976) 2 SCC 17

testimony; however, he should also remind the jury that ‘it is within their legal province to disregard the caution and convict based on such unconfirmed evidence if they believe it without a doubt’<sup>17</sup>.

The hierarchy of courts requires independent witnesses to corroborate as much of an accomplice's testimony as necessary ‘to identify the accused person as the criminal’. Such corroboration should be based on unquestionable or independently verified evidence. It should be mentioned that the preceding idea may prove to be an unnecessary and harmful move since some individuals may be afraid to hand out information to anybody for fear of being victimized<sup>18</sup>. The best rule appears to be that if this kind of individual has the necessary mens rea, he could be an accomplice. Since the criterion of mens rea is entirely absent, a witness who is not a guilty companion in crime or who has no relation to the criminal behavior is not considered an accomplice<sup>19</sup>. A man who witnesses a murder without reporting it is not a credible witness against the suspected culprit, even if he is not an accomplice. The simple fact that someone is observing a crime does not render them an accomplice unless it can be shown that they "took part in the commission of the crime".<sup>20</sup>

### **Accomplice Evidence under section 133 and section 114(b) of IEA- The conflict**

By virtue of section 118<sup>21</sup>, all persons are competent to testify if he is capable of making a rational answer to the questions posed to them. Section 133<sup>22</sup> states that “An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice”. Further, section 114 illustration (b) says “that an accomplice is unworthy of credit unless he is corroborated in material particulars”. The conflict begins from here. ‘Section 30 of the Indian Evidence Act’ of 1872 distinguishes between an Accomplice, Approver<sup>23</sup>, and Co-accused. Section 133 and Section 114(b) also play a role in determining the credibility of accomplice evidence.

Section 133 of the Evidence Act explicitly states that an accomplice is a competent witness, and a conviction is not deemed unlawful only due to reliance on the uncorroborated evidence of an accomplice. This clause permits the acceptance of uncorroborated testimony. This Section must be interpreted in conjunction with Section 114, example (b). The last portion authorizes the Court to assume the presence of certain facts, and the illustration clarifies what the Court may suppose, providing examples of the circumstances the Court should examine in determining the applicability of the illustrated maxims to a particular case. Illustration (b) explicitly states that an accomplice is deemed unreliable until substantiated in significant details. The Statute allows for

<sup>17</sup> Ramaswami v Emperor, ILR (1903) 27 Mad 271

<sup>18</sup> Nagpal R, “What Is the Evidentiary Value of Accomplice Testimony?” (2020) Available on “[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3696635](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3696635)”.

<sup>19</sup> K. P. Narayana and Others; (4), Dalbir Kaur & Ors. v State Of Punjab, 1976 Indlaw SC 172, (1976) 4 SCC 158.

<sup>20</sup> Philip M. Prasad; (3) K. P. Narayana and Others; (4), Dalbir Kaur & Ors. v State Of Punjab, 1976 Indlaw SC 172, (1976) 4 SCC 158

<sup>21</sup> Indian Evidence Act

<sup>22</sup> Of IEA, section 138 of BSA

<sup>23</sup> “An approver is someone who has been charged with a crime but later confesses and agrees to testify for the prosecution. He receives a lighter sentence or perhaps a pardon as compensation for his confession and testimony”. Available in “[https://highcourtchd.gov.in/sub\\_pages/top\\_menu/about/events\\_files/chap14.pdf](https://highcourtchd.gov.in/sub_pages/top_menu/about/events_files/chap14.pdf)”

the conviction of a defendant based only on the uncorroborated evidence of an accomplice, although the principle of caution is encapsulated in the image<sup>24</sup>.

In *Muthukumaraswamy Pillai v R*<sup>25</sup>, the Madras High Court observed that “The rule in Section 114 and that in Section 133 is part of one subject, and neither section is to be ignored in the exercise of judicial discretion. The illustration (b) is, on the other hand, the rule, and when it is departed from, the court could demonstrate, or it should appear, that the circumstances justify the extraordinary treatment of the case. Further, the court added that It is not possible constantly with the Indian Evidence Act to hold that, as a matter of law, the presumption must be raised and rebutted by special circumstances or by corroboration”<sup>26</sup>.

This section on accomplice is the sole entire rule of law governing valid evidence of an accomplice. However, the court cannot proceed without considering illustration (b) provided under Section 114 of the Indian Evidence Act, which is regarded a rule of direction. It is, however, not a strict premise that cannot be rejected but rather a legal presumption. ‘The combined effect of the section and Section 114(b) of the Indian Evidence Act is that, while an accused's conviction can be granted based on the testimony/statement of an accomplice and is not considered illegal, courts will not admit such evidence without corroboration of evidence/material particulars’. Interpreting the two provisions together, Indian courts have established that, while it is not against the law to act on an accomplice's unsupported proof, a prevalent rule of jurisprudence is that one should not act on an accomplice's evidence unless it is corroborated in the proper sense, and doing so is extremely dangerous. Furthermore, it's customary in India that the testimony of one accomplice cannot be used to support the testimony of another.

In the case of *Bhuboni Sahu v. Emperor*<sup>27</sup>, the conviction was rendered by the Judicial Committee based only on the confession of a co-accused and the evidence of an accomplice. The judicial committee that acquitted the offenders observed’ that “ Their Lordships, whilst not doubting that such a conviction is justified in law under Section 133, Evidence Act, and whilst appreciating that the coincidence of a number of confessions of co-accused all implicating the particular accused given independently, and without an opportunity of previous concert, might be entitled to great weight, would nevertheless observe that courts should be slow to depart from the rule of prudence, based on long experience, which requires some independent evidence implicating the particular accused. The danger of acting upon accomplice evidence is not merely that the accomplice is, on his own admission, a man of bad character who took part in the offence and afterwards, to save himself, betrayed his former associates and who has placed himself in a position in which he can hardly fail to have a strong bias in favour of the prosecution; the real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue....”<sup>28</sup>

<sup>24</sup> *Mrinal Das & Ors vs State of Tripura*, AIR 2011 SC 345

<sup>25</sup> ILR 35 Mad 397.

<sup>26</sup> Orfield LB , “Corroboration of Accomplice Testimony in Federal Criminal Cases” (1964)

Available on “[https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/vllalr9&section=9](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/vllalr9&section=9)”

<sup>27</sup> ‘(1949)51BOMLR955’

<sup>28</sup> “*Haroon Haji Abdulla v. State of Maharashtra* (1968) 2 SCR 641 : AIR 1968 SC 832”

### Rationale behind corroboration

The rationale behind ‘insisted corroboration’ is due to various reasons, such as as a participant in a crime, he may disregard his oath; he may falsely destroy evidence to shift blame to the accused; if he receives a promised or implied pardon for his role in the crime, he may be biased in favour of the prosecution. The level of suspicion assigned to an accomplice's evidence varies depending on the amount and character of his participation in the crime. The fact that the accomplice is a guy of dubious character does not justify rejecting his testimony.

In *Bhuboni Sahu case*<sup>29</sup>, the apex held that acting on accomplice evidence carries a risk not only because the accomplice admits to being a bad man who committed the crime, betrayed his former allies to save himself, and put himself in a situation where he is likely to be biased in favor of the prosecution; rather, the real risk lies in the fact that the accomplice is providing a story that, while largely true, is easy for him to embellish with false information

In “*Somasundaram @ Somu v State, represented by Deputy Commissioner of Police*”<sup>30</sup> it was held that “while evidence of an accomplice could be used to convict an accused, as a rule of prudence, the Court should first ensure that the testimony of the accomplice is corroborated in material particulars by adducing independent evidence. Further, evidence of two accomplices could not be used to corroborate with each other. Further, independent evidence has to corroborate with testimony of accomplice in material particulars, that is, corroboration should be in respect of the crime as well as the identity of the accused”.

A conflict of interest arises when co-accused witnesses testify against the accused without due process, as stated by Lord Abinger in *R. v. Farley*<sup>31</sup>, “the danger is that when a man is fixed and knows that his own guilt is detected, he purchases immunity by falsely accusing others.” Since the evidence is devoid of evidentiary support, the prosecution is limited to depending on other pieces of evidence. The evidence must be supported in important details about the accused's involvement, even if the court is inclined to accept it as natural or compelling<sup>32</sup>. An accomplice provides uncorroborated proof, which is legally admissible. However, it has been a common practice in the current legal system for judges to warn the court below about the risk of convicting a prisoner based on the uncorroborated testimony of such witness/accomplice, and the judge has been given the discretion to recommend that the jury not convict a person accused of a crime based on such evidence<sup>33</sup>. The judge should advise the court below that it is within the court's authority to convict on such evidence. In India, the aforementioned norm of practice has now become a rule of law<sup>34</sup>. In the landmark instance of *Mahadeo v. King*, where “the English law related to the evidence and proof was in force, it stated that the evidence of co-accused must be

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<sup>29</sup> Supra 27

<sup>30</sup> 2020 Indlaw SC 353

<sup>31</sup> 1837

<sup>32</sup> Available in <https://criminallawstudiesnluj.wordpress.com/2024/07/23/from-untrustworthy-to-trustworthy-the-bharatiya-sakshya-adhinyams-mandatory-corroboration-of-accomplice-evidence/>

<sup>33</sup> “K. Hashim v State of Tamil Nadu”, 2004 Indlaw SC 973, (2005) 1 SCC 237, 3

<sup>34</sup> R. Shaji v State Of Kerala, 2013 Indlaw SC 62, AIR 2013 SC 651; Anilkumar Dadurao Dhekle v Rukhiben and others, 2011 Indlaw SCO 303, (2011) 5 SCC 161; “Arjun Singh v State of Himachal Pradesh, 2009 Indlaw SC 151”.

corroborated in some material particular not only bearing upon the facts of the case in question but upon the implication made by person present." This concept of corroboration is now widely acknowledged as a common norm of law. In accordance with this concept, the House of Lords has always underlined that the panel of judges must be warned that it is "not safe to convict".

The Indian judges also have given a similar warning to the court below that it is "not safe to convict" the accused on the basis of uncorroborated testimony of an accomplice. Hence, the court is indirectly insisting on corroboration, which makes section 133 redundant. So, the confusion still persists. However, 'it is now a standard practice for courts not to convict when an accomplice's testimony is uncorroborated'. Where the trial is by jury, a conviction after a clear warning cannot be overturned. In exceptional situations, an accomplice's uncorroborated testimony may be used to support a conviction.

### **The shift from accomplice to approver**

The shift from accomplice to approver solely depends upon the reliability test. The accomplice role differs from the approver role regarding trustworthiness and evidence substantiation. Accomplice testimony is traditionally distrusted, and evidence supporting it would allow the prosecutor to proceed to trial even if the accomplice is unavailable as a witness. An accomplice is referred to as an approver when he testifies about the circumstances surrounding the offence after accepting the pardon given by the Court under Section 306, CrPC or Section 343 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter BNSS). The Court would have to decide whether or not an approver's evidence was credible while evaluating whether or not it satisfied the reliability test when assessing the evidence in its whole and in the context of the case's circumstances. The Court must first satisfy itself over the veracity of the approver's testimony and whether there is further evidence than the approver's statement that shows the approver personally participated in the crime<sup>35</sup>. In addition, the Court considers additional evidence from the approver on the involvement of other accused parties in the offence; this proof must be of a kind that links other accused parties to the offence. The corroboration has to be strong enough to bolster some kind of independent evidence in order to demonstrate that the approver is telling the truth to the person he is attempting to incriminate. Not every aspect of the accomplice's tale has to be backed up by independent evidence, yet some more must be accepted in order to assess if the approver is speaking the truth. Additionally, there must be some sort of confirmation, either through direct or circumstantial evidence, that links the co-accused to the accomplice's crime. Although the reliability of the evidence is highly questioned, if it turns out to be trustworthy, it may lead to conviction. The declaration of an approver witness could not be completely disregarded on the grounds that it was dubious or dishonest if the witness made the same announcement before the Chief Judicial Magistrate.

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<sup>35</sup> Haldin JW "Toward a Level Playing Field: Challenges to Accomplice Testimony in the Wake of United States v. Singleton"

Available in "[https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/waslee57&section=20](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/waslee57&section=20)".

In *der Singh v. State of Haryana*<sup>36</sup> the court held that “An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story, if given minute details according to reality, is likely to save it from being rejected *brevi manu*. Secondly, once that hurdle is crossed, the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case considering all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated evidence of an approver confidently held to be true and reliable by the Court may be permissible. Ordinarily, however, an approver’s statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based”.

In *C.M. Sharma v. State of A.P.*<sup>37</sup>, a contractor compelled to pay a bribe to a public officer in exchange for the promise of doing or refraining from an official act is deemed a co-conspirator and culpable associate. Seeking corroboration in all instances of a witness's testimony about a coerced bribe may yield nonsensical outcomes, since the bribe is often not conducted in public view, resulting in a lack of witnesses to the transaction. The contractor's testimony was substantiated by his accompanying witness. The appellant's assertion that the contractor should be regarded as an accomplice was dismissed. He was not an accomplice, as funds were taken from him. The Court asserted “that the corroboration of the evidence of a witness is required when his evidence is not trustworthy as of a witness admissible as an accomplice, even if he is not prosecuted and not granted a pardon”

### **The finality of Confusion under BSA**

The BSA, 2023, introduced ‘mandatory corroboration’ in accomplice evidence section 138 says that “An accomplice shall be a competent witness against an accused person; and a conviction is not illegal if it proceeds upon the corroborated testimony of an accomplice”. Section 138's term "corroborated" has been substituted with "uncorroborated". As a consequence, the accused's conviction based purely on accomplice evidence must now be corroborated. Sections 138 and 119 Illustration (b) now function together to require the corroboration of accomplice evidence, transforming it into a rule of law rather than a guideline.

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<sup>36</sup> “(1975) 3 SCC 742 : AIR 1975 SC 856”. Also see *Mohd. Shafi v Mohd. Rafiq and Another*, 2007 Indlaw SC 1313, (2007) 14 SCC 544; *Rakesh and Another v State of Haryana*, 2001 Indlaw SC 20101, (2001) 6 SCC 248; *Ranjit Singh v State Of Punjab*, 1998 Indlaw SC 1220, (1998) 7 SCC 149

<sup>37</sup> (2010) 15 SCC 1

Section 138's term "corroborated" has been substituted with "uncorroborated". As a consequence, the accused's conviction based purely on accomplice evidence must now be confirmed. Sections 138 and 119 Illustration (a) now function together to require the corroboration of accomplice evidence, transforming it into a rule of law rather than a guideline. This change is likely to have a considerable influence on the justice system.

### Conclusion

Even though BSA has introduced mandatory corroboration, which will eventually reduce the scope of judiciary and interpretation and it certainly it contributes to develop a more reliable and equitable system. With the implementation of this new paradigm, the chance of erroneous convictions might be reduced. This would be accomplished by conducting exhaustive investigations and making certain that convictions are backed by substantial evidence that can be evaluated independently. A significant amount of preparation that is required in order to properly traverse this new region.

The BSA signifies a significant shift in the way Indian courts view accomplice testimony. Required corroboration encourages a more reliable and equitable system even if it may restrict judicial authority. This new paradigm may lessen the possibility of erroneous convictions by ensuring that convictions are supported by solid, verifiable evidence and by conducting exhaustive investigations. Based on prior rulings, courts must establish precise guidelines for evaluating accomplice testimony and corroborating documentation. Despite current obstacles, the BSA represents a significant step towards a more robust and fair criminal justice system in India.

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