

A STUDY ON EVIDENTIARY VALUE OF ACCOMPLICE TESTIMONY

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ABSTRACT:

An accomplice is a person who voluntarily takes part during a guilty act, the knowledge possessed by him is invaluable, however, the purpose of contention is whether the evidence provided by him is reliable and trustworthy. The law associated with an Accomplice is backed by a myriad of Judicial decisions. This paper seeks to know the law related to an accomplice with the assistance of multiple Case laws and Journals. This paper assesses the difference between an Accomplice, Approver and Co-accused with reference to Section 30 of the Indian Evidence Act, 1872. It further seeks to know the law under Section 130 and Section 114(b) which creates a cloud of doubt because of contrary standpoints. This paper stresses on the requirement of corroboration and further delves into the character and extent of corroboration required in a case of accomplice evidence. This paper is done through an empirical method with a total of 200 responses and the analysis is done with SPSS software. The outcome being an accomplice is a competent witness in the court of law provided that he is certainly not a co-accused in a similar preliminary as provided in Section 133.

Keywords: Accomplice, Co-accused, Approver, Evidentiary Value, Indian Evidence Act

INTRODUCTION:

There is no separate definition clause in the Indian Evidence Act, 1872 to define the term “Accomplice” but it’s a prominent term interpreted in various judgments. The Apex Court of India enunciated R.K. Dalmia vs. Delhi Administration, the principle of Accomplice that when a person intentionally aids the commission of an offence or adjoins in the commission of such offence for which an accused is facing trial is known as an Accomplice. Such a person is considered to be “Particeps Criminis” and in case if he willingly provides testimony against the co-accused in offence for a pardon before the court of law, then such Accomplice is known to be an “Approver”. Accomplice is a person who intentionally commits himself into a crime and the information he provides is invaluable; however, the contention is that the evidence he provides is considered to be trustworthy and reliable. Accomplice may participate in the commission of crime in multiple ways. This entirely depends over the gravity of his part. The principal accused in a first-degree participation crime is solely responsible for the commission of the crime. The principal accused in the second-degree participation crime is one who abets or helps in the commission of the offence. Legal provisions relating to accomplice are supported by various Judicial decisions. Corroboration is a main factor that affects the admissibility of accomplice testimony in court of law. It’s learned from many judicial decisions that an accused can be sentenced for an offence solely with accomplice testimony as evidence and such action cannot be considered illegal

in the eye of law but the exists a necessity that the deciding court shall look into and demand for corroboration of facts, material facts and facts in issues as a practice. This research attempts to understand the concept of Accomplice, with reference to Section 30 of Indian Evidence Act, 1872 and distinctions between an accomplice, approver and co-accused. It further aims to understand the necessity of corroboration of evidence furnished by an accomplice.

The Indian Evidence Act,1872(“Evidence Act”) doesn’t define the word ‘Accomplice’, however, “the Judiciary interprets it in various subsequent judgements. The Supreme court elucidated on the principle of an Accomplice in R.K Dalmia vs. Delhi Administration, that a person who voluntarily takes part or aids within the commission of a criminal offense for which the accused is facing trial is an Accomplice. He's a particeps criminal and in the case where he provides testimony against the co-partners in crime for a pardon provided by the court, the accomplice is known as an approver.”

This position was supported by the precedent set by Chandan v Emperor³, the Court stated that ‘Accomplice’ “may include all partners in crime i.e. particeps criminis.” “A person who is guilty associate during a crime or who features a reference to the criminal act that may be jointly indicated with the principal criminal is an Accomplice.”

“Accomplice includes approver, co-accused, informer, spy and abettor.

“The court in Shanker v State of Tamil Nadu¹² held that when an accomplice turns into an approver, he acquires the status of a prosecution witness. The evidence provided by the approver should complete two conditions, firstly, the evidence should be reliable, and secondly, the testimony provided by him must be adequately corroborated.” Sir Subramania Ayyar in Ramaswami Goundan v. R.¹³, elucidated on the principle of an approver stating that “an accomplice witness is one who is either being jointly tried for the same offence and makes admissions which can be taken as evidence against a co-prisoner and which make the confessing accused pro hac vice a kind of witness, or one who has received a conditional pardon on the understanding that he's to inform all he knows, and who may at any time be relegated to the dock if he fails in his undertaking.”

There is no separate definition clause in the Indian Evidence Act, 1872 to define the term “Accomplice” but its a prominent term interpreted in various judgments. The Apex Court of India enunciated R.K. Dalmia vs. Delhi Administration, the principle of Accomplice that when a person intentionally aids the commission of an offence or adjoins in the commission of such offence for which an accused is facing trial is known as an Accomplice. Such a person is considered to be “Particeps Criminis” and in case if he willingly provides testimony against the co-accused in offence for a pardon before the court of law, then such Accomplice is known to be an “Approver”. Accomplice is a person who intentionally commits himself into a crime and the information he provides is invaluable; however the contention is that the evidence he provides is considered to be trustworthy and reliable. Accomplice may participate in the commission of crime in multiple ways. This entirely depends over the gravity of his part. The principal accused in a first degree participation crime is solely responsible for the commission of the crime. The principal accused in the second degree participation crime is one who abets or helps in the commission of the offence. Legal provisions relating to accomplice are supported by various Judicial decisions. Corroboration is a main factor that affects the admissibility of accomplice testimony in court of law. Its learned from many judicial decisions that an accused can be sentenced for an offence solely with accomplice testimony as evidence and such action cannot be considered illegal in the eye of law but the exists a necessity that the deciding court shall look into and demand for corroboration of facts, material facts and facts in issues as a practice. This research attempts to understand the concept of Accomplice, with reference to Section 30 of Indian Evidence Act, 1872 and distinctions between an accomplice, approver and co-accused. It further aims to understand the necessity of corroboration of evidence furnished by an accomplice.

OBJECTIVES :

- To assess the difference between an Accomplice, Approver and Co-accused
- To study the law under Section 130 and Section 114(b) of the act
- To know the nature and extent of corroboration required in a case of accomplice evidence.

REVIEW OF LITERATURE :

1. (Nagpal, n.d.) Among the procedural changes that recently have come vulnerable on ex post facto grounds is that the repeal of statutes prohibiting a conviction supported an accomplice's testimony unless the testimony was corroborated by other evidence.
2. (Lowenthal 1933) Several courts have held that the retroactive application of the repeal of an accomplice corroboration requirement runs afoul of the constitutional prohibition of ex post facto laws.
3. (Harnon 1971) that retroactive application of an evidentiary change doesn't violate the ex post facto prohibition unless it acts in such a way on change the substantive elements of a criminal offense . Judged by this standard, the repeal of an accomplice corroboration requirement doesn't violate the ex post facto clauses.
4. (H. 1919) The Framers' aversion to ex post facto laws was supported their notion of the inherent limits of legislative power. a number of the delegates to the Constitutional Convention perceived such legislation as so contrary to the essential principles of republican government that they doubted whether it had been necessary to incorporate a particular prohibition.
5. (Lippke 2010) In *Calder v. Bull*,²⁷ the first Supreme Court case to construe the clauses, Justice Chase stated simply that ex post facto laws were contrary to the primary principles of state and susceptible to abuse for improper purposes.
6. (Lambert and Aronovitz 2012) In 1883 the Supreme Court introduced the substantial rights test for ex post facto challenges to changes in criminal procedure. Under this test, a procedural change can't be applied retroactively if it infringes on a substantial right that the defendant enjoyed at the time she committed her crime
7. (Giannelli 1989) Although some recalcitrant witnesses require only moderate pressure from the court, others refuse to cooperate even when faced with a order backed by the threat of civil or criminal sanctions.
8. (Kassirer and Cecil 2002) In recent years, the strategy of highlighting the non-cooperation of certain witnesses has been actively employed within the fight against organized crime.
9. (Bär 2003) This Article argues that the state's interests in presenting relevant information to the jury and also the compelling ought to diminish the influence of social group generally justify allowing the jury to watch this process.
10. (Cohen 2013) Although prosecutors may seek to demonstrate witness noncooperation during a wide range of contexts, this article doesn't conceive to explore the evidentiary uses of non-cooperative behavior on the a part of a defendant's spouse, 2 lawyer, 3 or members of the family in ordinary criminal trials.
11. (Kumari, n.d.) accomplice testimony during this context is extremely difficult to secure. The technique of using the very recalcitrance of co conspirators to incriminate each other as an evidentiary fact provides a method to combat this difficulty. Such an approach to witness noncooperation isn't inconsistent with current features of conspiracy law.
12. (Bhotika, n.d.) At present, there aren't any specific rules that tell courts a way to weigh the evidentiary significance of witnesses' refusal to obey court orders to testify.

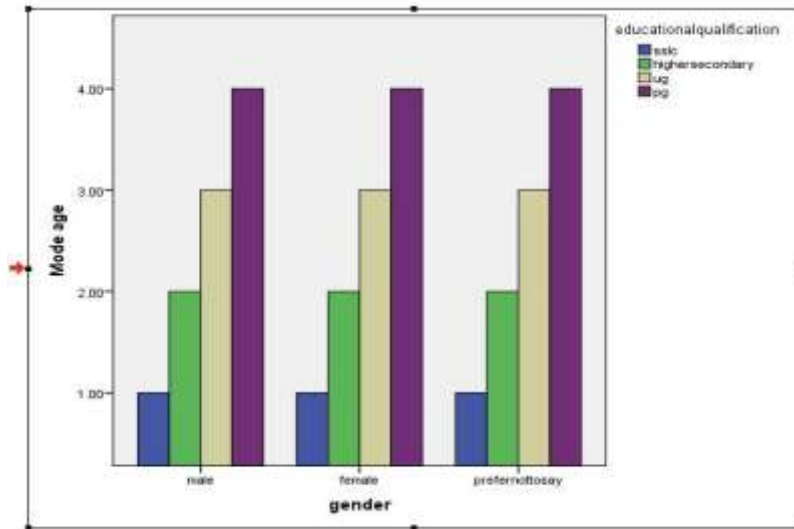
13. (Müller-Rostin 2018) Typically, the provision of a witness are litigated when one party seeks to introduce prior statements or prior testimony of the witness at trial, despite the very fact that the witness is seemingly available to produce first-hand testimony.
14. (Cuniberti 2018) In order to present any evidence, a party must demonstrate that the topic is materially relevant to proving the problem at hand. Looking on the actual facts of the case, presentation of a noncooperative witness could also be relevant for one or more of the subsequent reasons: to fill gaps during a party's case, to produce "auxiliary evidence," or to produce the state with a further retributive tool.
15. (Agarwal, n.d.) The purpose of auxiliary evidence isn't to produce evidence probative of a central issue, but rather to shore up the evidence or testimony that's vulnerable or impeachment. Presenting evidence of witness non-cooperation as auxiliary evidence helps to inoculate the prosecution against a regular defense strategy of impeaching the character of witnesses who testify under cooperation agreements.
16. (Trace and Francisco-Revilla 2015) If evidence later turns up indicating that cooperators have lied or concealed their role in any significant criminal activity, the agreements could also be torn up and therefore the cooperators prosecuted for any and all of the crimes that they need already reported to the government.
17. (Stauffer 2006) The permissibility of an inference is strongly dependent on the potential array of reasons which may motivate a specific witness to refuse to cooperate. Although the government may rightfully be able to compel a witness to invoke a privilege before the jury, few circumstances would justify permitting the state to then ask the jury to draw adverse inferences against the defendant supported the witness's invocation of the privilege.
18. (Rao 1986) The ambiguity on the motivation for the refusal to testify thus makes any inferences drawn from the invocation of the privilege inherently untrustworthy.
19. (Sahlin and Rabinowicz 1998) In most cases when a witness refuses to testify despite lacking a legitimate fear of self-incrimination, 'non-cooperation is probably going to stem from one among four main reasons. First, a witness might refuse to testify in fear of the defendant. Second, a witness may refuse to testify out of a desire to stick to a code of silence. Third, a witness may refuse to testify out of fear that he or she may at a later date be prosecuted for perjury. Finally, the witness simply may have a strong desire to not incriminate the defendant.
20. (Tarasov 2019) While forcing witnesses who fall under the latter category to invoke their privilege before the jury might unavoidably prejudice the defendant, "it could be proper in some cases to possess the proceeding within the presence of the jury where the government is dealing with" witnesses of the more ordinary variety.

RESEARCH METHODOLOGY:

The research method followed here is empirical. A total of 200 samples have been taken out as a convenient sampling method. The sample frame taken by the researcher is certain metropolitan areas of Chennai and through online channels. Independent variables are age, education qualification, gender, and dependent variables are are you aware of the concept of accomplice testimony in prosecution;an accomplice shall be a competent witness against an accused person. The statistical tool is graphical representation.

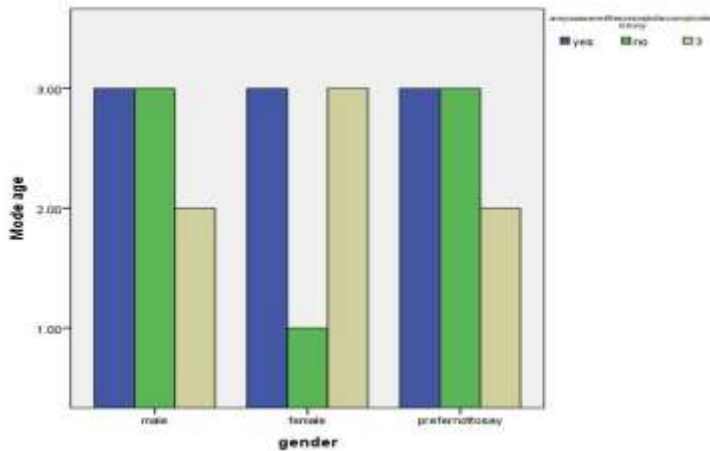
ANALYSIS:

Figure 1 :



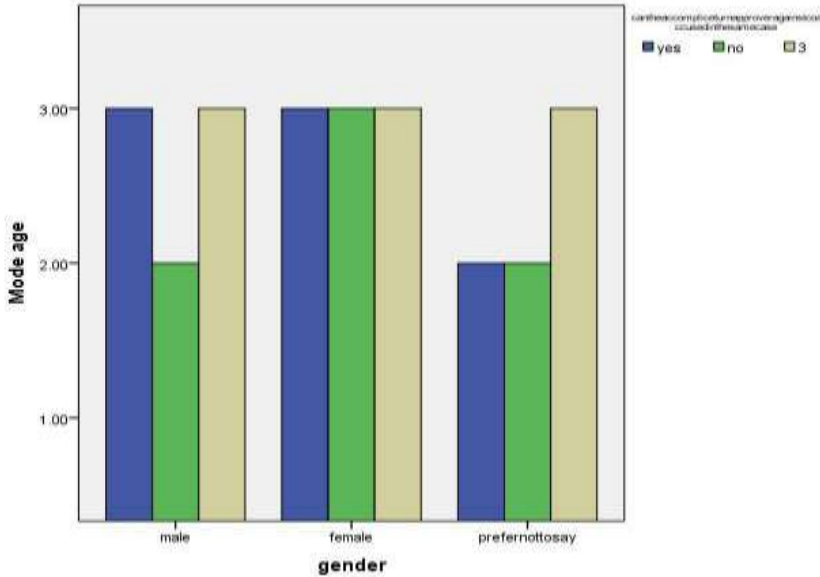
Legend : Fig. 1 shows the percentages of the independent variables of educational qualification student, Undergraduate, post graduate and others.

Figure 2 :



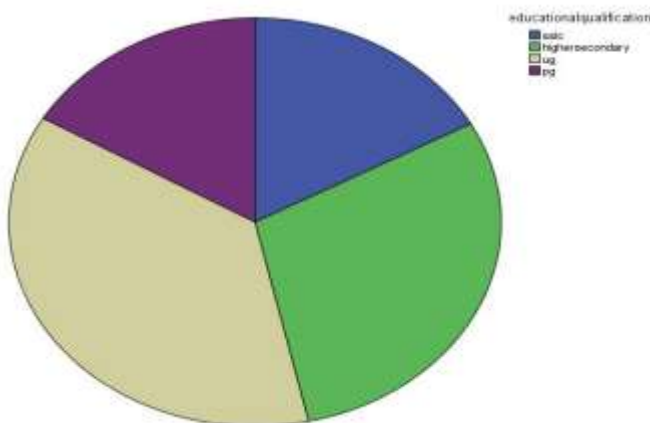
Legend : Fig. 2 shows the percentages of the independent variables of occupations of respondents engineers, doctor, lawyers, farmers and others.

Figure 3 :



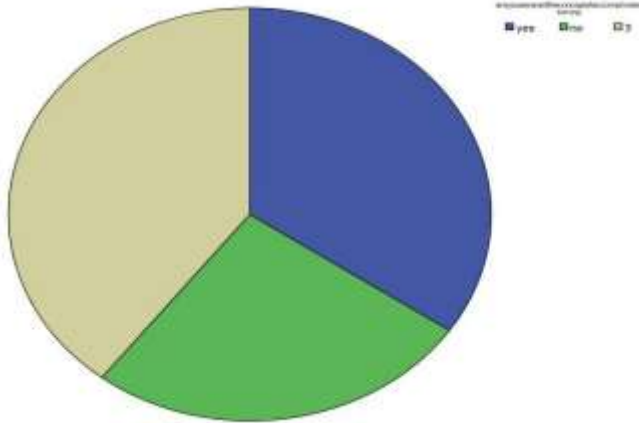
Legend : Fig. 3 shows the percentages of the independent variables of age between 18 to above 60 years.

Figure 4 :



Legend : Fig. 4. shows the percentages of the independent variables of gender of male, female and prefer not to say.

Figure 5 :

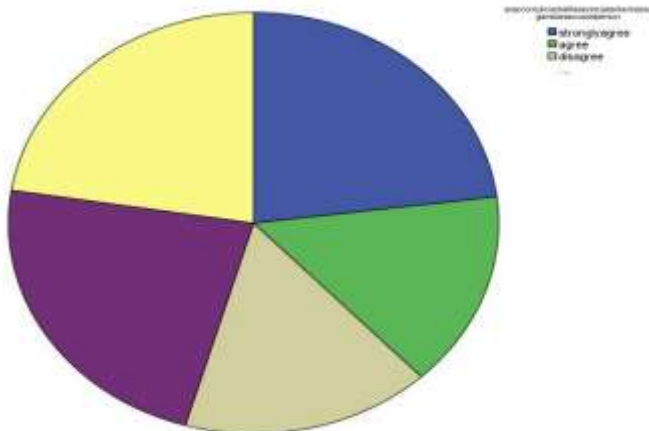


Legend : This Fig shows the age distribution with gender of various respondents on opinions whether an accused can claim for right to be released on accepting bail bond .

Results:

From the above survey, Fig. 1 shows the percentages of the independent variables age groups of various respondents from 18 to above 60 years. It is observed from the responses received are in different ratios. Most of the respondents from age group 18 to 45 years either agreed or strongly agreed or stayed neutral on opinions whether an accused can claim for right to be released on accepting bail bond. The respondents who agreed mostly belonged to the present generation. The present generation believes in humanitarian treatment of prisoners which is dealt in the Modern day criminology and hence such a response is derived.

Figure 6 :



Legend : This figure represents educational qualifications with occupation of respondents awareness about whether Sec 88 of Crpc meant for ensuring appearance of the accused.

Results: From the above survey, Fig. 2 shows the percentages of the independent variables of educational qualifications of various respondents from UG to other categories. It is observed that the responses were received from all educational qualifications in different ratios. Most of the responses were from advocates and Farmers. It is further derived that most of the respondents with UG PG degree agreed and in other categories, respondents with qualification

also agreed and there were uniform responses and their awareness about Sec 88 of Crpc meant for ensuring appearance of the accused. It is seen that there is adequate legal awareness among the educated respondents belonging to various occupation regarded the courts procedure under Sec 88 of Crpc which is meant for ensuring appearance of the accused in the court.

DISCUSSION:

“An accomplice may be a competent witness during a trial provided that he's not a co-accused in the same case. However, the competency that has been granted to him by the court doesn't divest him of the character of an accused.” “The confession of one of the co-accused can't be used to corroborate the evidence of an accomplice against the others, because such a confession can't be placed on a better footing than the evidence of an accomplice and is moreover not given on oath or subject to the test of cross-examination and is guaranteed by nothing except the peril into which it brings the speaker and which it's generally fashioned to minimize.”

Section 30 of the Indian Evidence Act states that the court can consider the confession of the co-accused as evidence. “The scope of Section 30 isn't limited to confessions made ahead of the magistrate. On account of an approvers death, the confession provided by him can enter corroborating other shreds of evidence but not as substantive evidence by itself. However, the confession provided by a dead person” “and has never been brought for trial isn't admissible under Section 30 which insists upon a joint trial becomes relevant when it's read with Section 32(3) “The argument primarily states that the confessing of the co-accused can't be placed higher than the evidence provided by an accomplice, thereby the cautionary principle applies.

“A conviction based upon uncorroborated evidence whilst taking into consideration all the facts and circumstances regulating a specific case is never permissible by the Court. Ordinarily, an approvers testimony has got to be corroborated with material details that bridge the gap between the criminal and also the crime.” “Certain clinching features of involvement disclosed by an approver appertaining on 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 could also be based.”

“In Rameshwar v. State of Rajasthan, the court laid down the overall guidelines with respect to the character and extent of corroboration required before an accomplice witness is taken into consideration. Firstly, Every minute detail of the accomplices testimony doesn't need to be corroborated by independent evidence albeit some supplementary evidence is required. Independent confirmation of every material circumstance isn't necessary, the independent evidence provided should corroborate the testimony of the accomplice and shall in itself be adequate to convict the accused. The evidence provided shall satisfy the court about the involvement of the accused and its necessary that the independent evidence adds credibility to the testimony of the accomplice in order that it's reasonably safe for the court to rule upon it. Secondly, The independent evidence should connect the accused with the crime” “in some material form the evidence given by the accomplice”. “Thirdly, the corroboration should be from independent sources and not the testimony of another accomplice because it wouldn't be sufficient to corroborate. Lastly, the corroboration are often either direct or circumstantial. Circumstantial evidence connecting the accomplice's testimony is sufficient also.

LIMITATIONS:

One of the fundamental principles which is underlying under the criminal jurisprudence is that conviction or acquittal should be made in conformity with the principles of natural justice and procedure established by law as provided under Article 21 of the Constitution of India. Thus if an accomplice includes a chance to be exempted from criminal liability, yet the pardon should be granted in accordance to the provisions entailed under Article 71 and 161 of the constitution of India read with section 432 and 435 of the criminal procedure code, 1973 .

CONCLUSION:

An accomplice is a competent witness in the court of law provided that he is certainly not a co-accused in a similar preliminary as provided in Section 133. The competency conferred upon him "doesn't strip him of the character of an accused" and "he holds as a participes criminis. This holds as a significant issue encompassing the

credibility and reliability of evidence provided by him. There is no overlap between Section 133 and Section 114(b), the previous is a Rule of law and the last is a Rule of prudence. In the event that the accomplice testimony is attempted together with a confessing co-accused inside the ambit of Section 30 of the Evidence Act for a conviction, the confession may be alluded to add some assurance to the verdict. An accomplice accomplishes resistance under section 306 of the Cr.P.C and is needed to affirm after swearing to tell the truth like some other witness, the prosecution is resigned and under Section 321 of the Cr.P.C46, the accused is officially discharged. Article 20(3) of the Indian Constitution provides" "that no accused will be compelled to be a witness against himself."47 "Nonetheless, the resistance received by an accomplice is voluntarily in exchange of total honesty and isn't forced by the court of law to provide self-incriminating evidence. Thereby, Section 306 and Section 308 isn't being challenged and the pardoned accused is needed to completely disclose the material subtleties and on his subsequent disappointment, he might be charged under Section 308 of Cr.P.C alongside the prior offense. In any case, a participes criminis is part of the offense and despite the fact that he has received invulnerability by a judicial act which might be utilized for self-incrimination, it is stunning to expect complete honesty. Corroboration is fundamental when the testimony of an accomplice is thought about, the nature and degree of it depends on each individual case."

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