

“Approver”

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Sec.306 to 308 Cr.P.C deals with the subject of approver.

Who is an Approver?

Approver is an accomplice who has been tendered pardon on condition of his True disclosure of the facts & circumstances of the crime by becoming a witness on behalf of the prosecution.

An accomplice is a person who is either directly or indirectly supposed to have been concerned in an offence or privy to an offence. Accomplice is sharer or partner in the crime.

Categories of accomplices

Prime accused of 1st degree:

Who has physically participated in the commission of crime and he is mainly responsible for the crime.

Ex: ‘A’ killed ‘B’ with a knife. A is the prime accused of 1st degree.

Prime accused of 2nd degree:

Who has also physically participated in the crime by assisting in the commission of crime?

Ex: When ‘A’ was trying to kill ‘B’, ‘B’s wife obstructed ‘A’. On that the companion of A i.e. ‘D’ caught hold of B’s wife, thereby cleared the way to ‘A’ for murdering ‘B’.

Here the acts of ‘D’ come under this category.

Accessories before the fact:

Abettors and conspirators who take part in the crime before the actual occurrence of crime without being physically present at the scene of crime.

Accessories after the fact:

These accomplices who join the hands of accused after the commission of crime to screen the evidence and harbour the criminals from arrest, punishment etc.

Secs.201, 212 to 216-A I.P.C.

In certain cases the abettor may also become prime accused though he was not physically present in the crime.

Ex: ‘A’ wanted to eliminate his rival ‘B’. For that purpose he engages hired gundas who kill ‘B’. Though ‘A’ was not physically present ‘A’ is called as prime accused. It is depends upon the nature and degree of criminality.

The prosecution seeks the help of approver only (1) when here is no sufficient evidence to lay charge sheet or even if charge sheet is filed with the available evidence when the case is likely to end in acquittal. (2) When the nature of offence is very serious affecting the interest of state and public in general. So in order to secure conviction against such criminals the prosecution bargains with any one or some of the accused (accomplices) to stand as witness for strengthening prosecution’s case.

For what offence the pardon will be granted

Three classes.

- (i) Offences triable exclusively by the Court of Session [Sec.306 (2) (a) Cr.P.C.].
- (ii) Offences triable by the court of a special judge appointed under the criminal law amendment Act, 1956 [Sec.306 (2) (a) Cr.P.C.].
- (iii) Offences punishable with imprisonment, which may extend to seven years or with a more severe sentence [Sec.306 (2) (b)].

WHO ARE EMPOWERED TO TENDER PARDON [Sec. 306 (1) Cr.P.C.]:

The Chief Judicial Magistrate or Metropolitan Magistrate can tender pardon at any stage of Investigation, or Inquiry into, or trial of the offence. And the Magistrate of the First Class can tender pardon at any stage of the “Inquiry” or “Trial” but not at the stage of investigation [Sec.306 (1)].

When two authorities are simultaneously empowered to grant tender of pardon, if the lower authority has not granted, the higher authority may grant. But at the first instance if the higher authority is approached and it has not granted, the lower authority shall not grant except on fresh facts, which were not brought before the superior authority, which declined to grant pardon.

Like bail applications any Magistrate Court if declines to grant pardon, the same court can entertain second application but only on fresh facts or additional fresh facts.

What is the procedure involved in declaring an accused as Approver:

It is nothing but a bargain between the police and accused. Once the bargain is settled then the procedure is to be followed.

Either the prosecution or the accused who has agreed to be an approver or somebody on behalf of such accused may move application for tender of pardon. Both parties will be heard. Since both parties already came to an understanding, there will be no question of any objection by either of the parties. If there is any objection by either of the parties the court will not grant tender of pardon.

Court will examine the facts of the case and after hearing both the parties it shall record the reasons before granting tender of pardon Police in general get the confessional statement of the accused recorded prior to the initiation of these proceedings as guarantee but it is not compulsory. Even the court will not look into such confessional statement as a factor weighing for granting or rejecting tender of pardon.

EXAMINATION OF ACCUSED AS A WITNESS:

Every person accepting a tender of pardon made U/s 306 (1) shall be examined as a witness in the court of the Magistrate taking cognisance of the offence and in the subsequent trial if any [Sec.306 (4) (a)].

The examination of the approver is a condition precedent for the committal. The object for such examination is:

- (i) That the approver would have to disclose his evidence at the preliminary stage before the committal order is passed, and
- (ii) That the accused who has to face trial thus not only know what the evidence is against him but get an opportunity to rely upon the deposition of an approver for the purpose of disproving it as untrustworthy and also to bring out contradictions or improvement if any during the trial by comparing his earlier statement.

Every person accepting a tender of a pardon made U/s 306 (1) shall unless he is already on bail be detained in custody until the termination of the trial. Here the intention is not to punish the approver but it is in his interest to save him from his erstwhile friends and companions (i.e. accused) and to secure his person during trial for recording his evidence.

If the Chief Judicial Magistrate grants the tender of pardon he must transmit all the papers to the Judicial Magistrate Court that is to conduct inquiry of such offence.

During the course of inquiry or trial if the Judicial Magistrate First Class is granting tender of pardon it should if the offence is triable by Sessions Court or Special Judge

Court commit the case to such court. If the offence is triable by that granting court itself it should transfer to the Chief Judicial Magistrate as the same court should not try the offence. Then the Chief Judicial Magistrate Court transfer the case to any other Judicial Magistrate First Class Court for trying such offence under its jurisdiction [Sec.306 (4) Cr.P.C.).

IF APPROVER TURNS HOSTILE:

The approver will be examined as a witness in the regular trial. If he turns hostile, the public prosecutor has to certify that the approver did not stick to the conditions of granting tender of pardon and he is liable to prosecuted for the offence he was charged earlier by filing a separate charge sheet and tried separately. In addition to the earlier offence he will also be prosecuted for the offence of perjury U/s 193 IPC after sanction by High Court U/s 308 Cr.P.C.

GRANTING TENDER OF PARDON DURING TRIAL:

During the course of trial also the trying court may grant tender of pardon to the accomplice U/s 307 Cr.P.C. and file will be sent back to the lower court for recording the statement of approver as per Sec.306 Cr.P.C. If the case is tried by the Special Judge Court the same court may tender pardon and also record his statement as per Sec.306 Cr.P.C. and proceed with the trial.

EVIDENTIARY VALUE:

Approver is a competent witness and a conviction will lie basing upon his evidence as per Sec.133 of IEA. But as per Section 114 illustration (b) of IEA accomplice's evidence is unworthy of credit unless it is supported with the material aspects through other circumstantial evidence as corroboration. This is required since he is an unbelievable person betraying to his co-accused. Recently, the Hon'ble Supreme Court also held that accomplice evidence is not believable unless it is corroborated with material aspects as guarantee of truth.

CASE LAW

1999 Cr.L.J. 2889 (S.C.)

Evidence Act, Sec. 133 – Cr.P.C. Sec. 306: - Accomplice – Testimony – conviction solely on that basis – permissible – But his testimony should pass test of reliability and corroboration in material aspects.

Evidence Act, Sec. 133 – Cr.P.C. Sec. 306: Accomplice – Statement made before Magistrate before pardon was tendered to him – can be used as corroborative material – Not great weight attached to it by court in the instant case since it was only his former statement.

Evidence Act, Sec. 133 – Cr.P.C. Sec. 306: Accomplice - Not disclosing the name of one accused person when questioned by Police before he offered to confess – Not of much consequence when in confessional statement he implicated himself and other accused person.

2000 Cr.L.J. 1417 (SC)

Tender of Pardon, Sec. 306 (4) – Examination of approver – proceedings before Magistrate is neither inquiry nor trial – plea that approver should be examined in open court and not in chamber – Not tenable – Further approver must not be examined in the presence of other accused in order to cross examine him by the accused since it is at stage of investigation – Giving opportunity to accused to cross-examine approver was not necessary - Accused has got right to cross examination him during regular trial.

Evidence Act Sec. 3 – Evidence Inconsistencies / improvements – Approver deposing with respect to events which took place over a period of three years – Some

inconsistencies of a minor nature in her evidence can be regarded as natural – Giving more details while deposing before Sessions Court are not improvements of such a nature as would create any doubt regarding her trustworthiness.

2000 Cr.L.J. 1429

S.S. 306 (4) (a), 465 (2) - Tender of Pardon – Validity – Accused failed to raise plea before or after committal of case to Session Court that they were not permitted to cross – examine approver – Nor objected when approver was examined and cross examined during trial - can not be permitted to raise such plea at stage of final arguments – More so, when no failure of justice or prejudice shown to have been caused because of said omission - Sec. 465 (2) would be attracted - Trial not vitiated.