



## The Credibility and Admissibility of the Evidence of Accomplice in the Legal System of Pakistan

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**Abstract:** *The concept of an accomplice is an important concept in the QSO 1984. Courts decide the legal propositions on the basis of evidence, sometimes offences are committed in which no evidence is available to punish the wrongdoers. In such cases, there is a strong probability that the offenders can escape punishment due to the non-availability of evidence to punish the wrongdoers. In order to decide the cases of blind murders and other offences of the like nature and to punish the culprits the Prosecutor on behalf of the Government enter into a contract with some of the guilty associates to become an accomplice and to give evidence against the rest of the guilty associates. There is a hot debate among legal circles about the credibility and admissibility of the evidence of an accomplice. This article is an effort to explore the legal aspects of this topic from various angles.*

**Key Words:** Accomplice, Guilty Associates, Contract, Blind Murder, Prosecutor

### Introduction

The criminal justice system's primary objective is to ensure justice. Along with the provision of justice to everyone seeking justice, another purpose of the Criminal Justice System is to punish those accused of an offence through a fair trial. In order to get punished the accused by producing strong piece of evidence that there is no likelihood of innocence of the accused on the basis of evidence there is only one probability that he is the accused is the convicted person. Sometimes blind offences are committed in which no evidence is available to the prosecution branch to get punished the wrongdoers through the court of law in some other situations, with the rise of sophisticated technology, it is becoming more difficult to apprehend and prosecute the criminals, making it challenging to gather credible evidence to prove guilt beyond a shadow of doubt in court. In order to remedy this situation and to do complete justice, the accomplice tool is increasingly being used in cases where investigators have no leads or clues. Many legal experts believe that this additional evidentiary tool has strengthened the judicial system and prevented criminals from evading justice. Approver testimony helped reveal the details of the

offence. There is a big question mark of the admissibility of evidence of a guilty associate who betrays his associates and if he can betray his fellows what is the guarantee that he would not betray the court of law?

### Definition of Accomplice

#### Etymology

The term “accomplice” was first recorded in the 1580s and has its roots in Middle English “accomplice”, derived from “a complice” in Old French meaning “confederate”. The Old French term was derived from the Latin verb “complicare” meaning “to fold together”. The addition of the article “a” to the word was influenced by the word “accomplice” (Accomplice 2023a). According to the Cambridge dictionary accomplice means a person who helps another person to commit an offence or a moral wrong (Accomplice 2023b).

According to the Black Law dictionary, an “accomplice” is someone who has taken part in a wrongful act and can be held responsible in a criminal case. This includes being physically present at the

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location where the crime occurred and providing assistance or encouragement to the perpetrator, even if the accomplice was not actually present at the scene of the crime.

## Common Law

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According to English common law, an accomplice is someone who actively takes part in a crime, even if they don't directly participate in the criminal act itself. For instance, in a bank robbery, the person who holds up the teller with a gun and demands the money is guilty of armed robbery. Other individuals involved in the crime, like the lookout or the driver of the getaway car, are considered accomplices, even if their specific actions wouldn't normally be criminal offences.

## Pakistani Law

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The topic of accomplice has been discussed in the relevant laws of Pakistan. The regulatory law which deals with and provides substantive law on the topic of accomplice has been discussed under Qanun-E-Shahdat Order 1984 and the relevant provision which deals with and provides substantive law on accomplice is Article 16 and Article 129(b). The procedure to grant pardon to an accomplice has been provided under the Criminal Procedure Code 1898 and relevant provisions which deal with the procedure to grant pardon is Section 337 CrPC.

The Federal Shariat Court's ruling in the case of Haider Hussain vs. Govt. of Pakistan, Provides an interpretation of the word "accomplice" as; an accomplice is a person who is a guilty associate or who helps another person in the commission of an offence.

## Who is not an Accomplice?

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There are certain situations where a person may not be considered an accomplice to a crime. For instance, if an individual is forced to commit a crime under the threat of death or other forms of pressure that they are unable to resist, they are not a willing participant but rather a victim of the circumstances.

Furthermore, if someone witnesses a crime but does not report it out of fear, they cannot be considered an accomplice. In the case of Prakash Chand v State, it was established that detectives, paid informants, and decoy witnesses are also not considered accomplices.

In situations where the testimony of a trap witness is the only evidence available, a court may convict based on their uncorroborated testimony if it is deemed truthful. However, it is up to the judge to determine whether the witness's testimony is reliable enough to be

acted upon. Judges must keep in mind the facts and circumstances of the case and be impartial in their decision-making. It can also be helpful for judges to consider the witness's character, background, and reputation in evaluating their evidence (Sehgal, 2020).

## Accomplice Categories

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Accomplices can fall into different categories, which include:

- Principal offenders of First and Second Degree: In the first-degree accomplice includes a person who himself commits an offence and in the second degree an accomplice means a person who provides help to another person who commits an offence.
- Accessories before the fact means those persons who provide assistance before the commission of offence but physically, they do not participate in the commission of offence.
- Accessories after the fact: It means those persons who provide help to the persons who have committed an offence knowingly that they have committed the offence. Those who assist the accused in escaping punishment or avoiding arrest are known as harbourers. All of these individuals are considered accomplices, as they have participated in the commission of the crime in some way or another. As such, any of them can be an accomplice (Ayush, 2023).

## The Grant of Pardon

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The act of pardoning someone comes with specific requirements that must be met. Firstly, the pardon can only be granted if the success of the case relies on it, and without the pardon, the prosecution would fail. Additionally, only the approver can request the pardon, not their father or any other party. The court must give careful consideration to the application and cannot simply approve it with a single word. To be eligible for the pardon, the person seeking it must provide full and truthful disclosure of all relevant circumstances surrounding the offence. This disclosure must come directly from the person seeking the pardon, not from someone acting on their behalf. The court must also establish specific conditions that must be met before the pardon can be granted. Finally, a pardon is only granted in exceptional cases with great care and caution, particularly when it comes to granting it to an accomplice, and only in situations of extreme necessity when there are ample grounds.

## Legal Perspective

According to Article 16, an accomplice can testify against an accused person and the punishment if provided on the basis of such accomplice evidence cannot be declared against law even if no independent corroboration has been done from any other independent source. However, Article 129(b) states that the court can assume that an accomplice is not trustworthy unless their testimony is supported by evidence. Even though it's technically legal to convict someone based on an accomplice's uncorroborated testimony, it's not considered a good practice to do so. The law allows for accomplices to testify, but it's usually not safe to rely solely on their testimony.

## Nature and Extent of Corroboration

To support the testimony of a person who has turned approver, the evidence provided must be trustworthy and obtained from reliable and independent sources or circumstances. While direct evidence can be used to corroborate the testimony, indirect evidence or circumstantial evidence can also be used. However, this circumstantial evidence should be of a nature that clearly suggests the guilt of the accused and should not be reasonably consistent with a theory of innocence. Corroboration is necessary in significant detail.

## The Role of the Judiciary in Shaping the Law And Its Interpretations

At first sight, it may appear that there is a conflict between the provisions of articles 16 and 129, illustration (b) of QSO, which could cause confusion for law students and individuals without legal knowledge. Article 16 states that, an accomplice can give evidence in all criminal cases relating to Tazir but an accomplice can not give evidence in cases relating to Had and Qisas because the nisab of evidence has been provided by Allah in Holy Quran for conviction in hudood.

Article 129 (b) states that the evidence of accomplice can not be given any weightage without its confirmation from any other independent source. The first Article i.e. 16 relates to a rule which has been provided by law and the second one deals with the rule of wisdom that no one should be punished without a piece of evidence which is not corroborated by material facts. As a result, it can be inferred that these provisions do not conflict with or contradict each other, but instead, complement each other.

In its verdict titled *Federation of Pakistan vs. Muhammad Shafi Muhammadi* (SCMR 932), the apex court of Pakistan laid down a rule that the above-

mentioned two provisions of law should be interpreted in such a manner that contradiction is avoided and these two provisions are harmonized.

As per the rule of construction, an accomplice can be considered a reliable witness, and a conviction can be lawfully based on their uncorroborated testimony. However, the court has the right to assume that the accomplice's evidence cannot be trusted unless it is corroborated in important aspects. This requirement for corroboration exists because the accomplice may lie to protect themselves from being held responsible.

The Supreme Court of India established a test in the prominent case of *Sarwan Singh vs. the State of Punjab* that introduced the double-test rule. In accordance with this rule, the evidence of accomplice should be corroborated in all material facts and the evidence of accomplice is such that it should be given weightage.

The Federal Shariat Court ruled that a conviction cannot be based solely on the testimony of an accomplice. However, if there is substantial corroborated evidence, a conviction may be possible.

## Present Standings in Pakistani Law

In Article 16 of the QSO, it is stated that an accomplice is a reliable witness and can testify in court. However, in Article 129 of the QSO, there is an illustration (b) that suggests an accomplice is an untrustworthy witness, and their testimony should be corroborated. This seems contradictory, but the courts have resolved this by interpreting Article 16 as a legal rule and Article 129 as a rule of caution or practice. According to *Ratanlal & Dhirajlal* in 2004, this has been the accepted practice for some time.

In 1991, the Federal Shariat Court in *Haider Hussain v. Government of Pakistan* ruled that Article 16 of the Qanoon-e-Shahadat Order (QSO) was in violation of Islamic injunctions. This article classified an accomplice as a *fasiq* (a person who is licentious or sinful) and required their testimony even in tazir cases to be corroborated. The court cited Verse 6 of Surah 106 of the Quran to support its ruling. The case was later appealed in the Supreme Court in 1994 to determine whether corroboration was necessary in tazir cases (*Muhammadi vs. The Federation of Pakistan* Sh. P 1979).

The Supreme Court has rejected the notion that an accomplice's testimony must always be corroborated in criminal cases, as this practice has become a common rule of law followed by most courts. Therefore, there is no need to make it a legal requirement in tazir cases, which allows the courts

some discretion in the matter. The decision to corroborate an accomplice's evidence is left to judicial discretion and two cases are discussed to illustrate this.

In one case, corroboration was deemed necessary, while in the other case, it was not. This discussion shows that courts generally require corroboration unless the testimony is deemed reliable. The *Abdul Waheed v. State* case is used as an example, where the victim claimed to have been kidnapped and raped by the accused, but medical evidence did not support the claim of forced sexual intercourse. The victim also disclosed that she accompanied the accused voluntarily to look after his wife but was detained for months and subjected to sexual abuse.

The accused was convicted by the trial court and the first appellate court, the Federal Shariat Court, based solely on the victim's testimony without any supporting evidence. The accused appealed to the Supreme Court, arguing that the victim was actually an accomplice in the crime and that her testimony should not be trusted without independent corroboration. The Supreme Court agreed with the accused and determined that the victim willingly helped him commit the crime. As a result, the court treated the victim as an accomplice and concluded that her testimony should have been discarded without supporting evidence. As there was no credible corroborative evidence, the Supreme Court acquitted the accused. This case demonstrates the importance of corroboration in accomplice testimony, and the Supreme Court's decision to set aside the lower courts' findings was based on the lack of such corroborating evidence.

In *Munawar Hussain v. State* (1993), the Supreme Court reviewed a case in which an accomplice's testimony was used to convict members of an international narcotic smuggling gang. The accomplice had been arrested and convicted in Norway for his involvement in the gang's activities. When other members of the gang were arrested in Pakistan, the accomplice was brought back to Pakistan to testify against them, as no other credible evidence was available. Despite the general rule that an accomplice's testimony must be corroborated, the court found that corroboration was not necessary in this case because the accomplice had already been

convicted by a court in Norway and had nothing to gain from giving false testimony against his associates. The court concluded that an accomplice's testimony is similar to that of other witnesses and should be corroborated unless exceptional circumstances exist.

Basically, the testimony of an accomplice is treated in the same way as that of a child or interested witness. The court tends to corroborate their testimony unless there is something exceptional.

### Evidence of Accomplice in Hadood Cases

Evidence of accomplice is not acceptable in cases of hadood. Had cases are those in which the quantum of punishment as well as the standard of proof has been prescribed by Allah due to which accomplice cannot become a witness in these cases. In hadood cases, the quantum of punishment has been prescribed and the number of witnesses required to prove had is the evidence of two male witnesses except the had of zina in which evidence of four male witnesses is required.

The evidence of an accomplice is acceptable only in tazir cases and it is not acceptable in hadood and qisas cases (*Bago vs The State*, 2000 YLR 994).

### Conclusion

From the above said information and references we may conclude that the evidence of accomplice is a kind of law of necessity. In those cases, in which no evidence is available for example cases of blind murder or in those cases in which evidence is very weak due to which procurator is unable to prove its case beyond the shadow of a doubt. In such cases, the prosecution enters into a contract with one of the guilty associates to tell the whole story to enable the prosecution to get punished the other accused persons in return for pardon for helping the court of law. Apparently, there seems to be a contradiction between Article 16 and Article 129(b) but after a careful study of these two and in the light of judicial precedents we may conclude that Article 16 is a rule of law and Article 129(b) is a rule of prudence so, these are supplementary and complementary to each other. Furthermore, the evidence of accomplice is not acceptable at all in all hudood and qisas cases.

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