

CHAPTER 14

Approvers

1. Definition—The term “approver” is neither defined nor used in the Criminal Procedure Code, but is usually applied to a person, supposed to be directly or indirectly concerned in or privy to an offence to whom a pardon is granted under Section 337 of the Code [Section 306 of new Code] with a view to securing his testimony against other persons guilty of the offence. The procedure laid down in Section 337 [Section 306 of new Code] has often to the resorted to in this State in cases of organised crime like dacoities, when no independent evidence is available to bring the offenders to book.

2. When pardon may be tendered and by whom—The scope of Section 337 [Section 306 of new Code] has been widened by the amendments made by Act No. 26 of 1955. Now besides the other offences specified in sub-section (1), a tender of pardon can be made in cases of all offences punishable with imprisonment of seven years or more. A Magistrate exercising powers inferior to those of a Magistrate of the first Class cannot tender a pardon, and Magistrate of the first class can do so only if the case is under inquiry or trial by him or (with the sanction of the District Magistrate) if he has jurisdiction in the place where the offence might be tried or inquired into, and it is still under investigation.

3. Reasons for tendering pardon should be recorded and extent of pardon explained to the intended approver—The reasons for tendering a pardon to any person must be stated.

In the cases in which a pardon is tendered, the intended approver should always be made clearly to understand the extent of the pardon offered to him : it should be explained to him that he is being tendered a pardon and will not be prosecuted in respect of such and such a case, and no others.

4. Only High Court or Sessions Court or Special Judge to try cases in which pardon has been tendered—When a Magistrate has tendered a pardon to any person and examined such person, the case cannot be tried by any Court other than the High Court or the Court of Session or in cases of offences punishable under Section 161 or 165-A of the Indian Penal Code or under the Prevention of Corruption Act, 1947 (II of 1947) by any Court other than the Special Judge appointed under the Criminal Law Amendment Act, 1952 (XLV of 1952).

5. Testimony of an approver generally requires corroboration for conviction—The evidence of an approver being that of an accomplice is *prima facie* of a tainted character, and has therefore to be scrutinised with the utmost care and accepted with caution [*cf.* 2 P. R. 1917 (Cr.)]. As a matter of law, pure and simple, a conviction is not bad merely because it proceeds upon the

uncorroborated testimony of an accomplice (*vide* Section 133 of the Indian Evidence Act). But it has now become almost a universal rule of practice not to base a conviction on the testimony of an accomplice unless it is corroborated in material particulars. As to the amount of corroboration which is necessary, no hard and fast rule can be laid down. It will depend upon various factors, such as the nature of the crime, the nature of the approver's evidence, the extent of his complicity and so forth. But as a rule corroboration is considered necessary not only in respect of the general story of the approver, but in respect of facts establishing the prisoner's identity and his participation in the crime.

6. The danger of accepting approver's evidence without corroboration should be pointed out to the jury—In cases tried with the aid of a jury, the evidence of an approver should not be left to the jury without such directions and observations from the Judge as the circumstances of the case may require, pointing out to them the danger of accepting such evidence in the absence of corroboration. The omission to do so is an error in summing up and is on appeal a ground for setting aside a conviction when the Appellate Court thinks that the prisoner has been prejudiced thereby and there has been a failure of justice.

7. If approver gives false evidence he can be tried for the offence and also for perjury—An approver is under the condition of his pardon bound to make a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. If the approver fails to comply with this condition and gives false evidence, he is liable to be prosecuted for the offence in respect of which pardon was granted and also for perjury. He cannot, however, be tried for the former offence except upon a certificate granted by the Public Prosecutor as laid down in Section 339 [Section 308 (1) of new Code]. Sanction of the High Court is necessary for his prosecution for giving false evidence. An application to the High Court for sanction to prosecute an approver, for giving false evidence should be by motion on behalf of the State and not by a letter of reference (*cf.* 10 P. R. 1904).

8. Approver should be kept in judicial custody until close of trial—An approver accepting a pardon under Section 337, Criminal Procedure Code [Section 306 of new Code], has to be "detained in custody" until the termination of the trial. The word "custody" as used in Section 337 (3) [Section 306(4) (b) of new Code], Criminal Procedure Code has not been defined anywhere in the Code, but the High Court has held recently that this "custody" means judicial and not Police custody. The detention of an approver, therefore, must be in a judicial lock-up under the orders of any Court. The practice of detaining approvers in Police custody is not correct.