St. John's Law Review

Volume 22
Number 2 *Volume 22, April 1948, Number 2*

Article 8

July 2013

Criminal Law--Who Are Accomplices--Status of Law Requiring Corroboration (People v. Wallin, 188 P.2d 64 (Cal. 1948))

St. John's Law Review

In the instant case the continuity of events in the entire transaction was not too difficult to measure. Sharp intelligible lines could be drawn between the acts constituting the offense in each charge. In fact the charges might have more easily been proven distinct by adherence to a rule, that, where the acts of the accused up to a certain point are declared by the legislature to constitute one crime, and that his acts committed thereafter constitute a second crime, and that each series of acts constituting separate crimes are subject to separate punishment, there is no double jeopardy.[17]

B. F. N.

CRIMINAL LAW — WHO ARE ACCOMPLICES — STATUS OF LAW REQUIRING CORROBORATION.—Defendant Wallin has appealed from his conviction as an accessory to the murder of the incurably ill daughter of Jeanette Paz, for which crime the latter had been convicted as principal prior to the trial of defendant. Evidence convicting Wallin consisted largely of the uncorroborated testimony of Jeanette Paz to the effect that defendant had encouraged her to commit the crime, suggested methods (none of which she used), and later, helped dispose of the body. The evidence did not tend in any way to link Wallin with the immediate act of murder. In his appeal for reversal of his conviction, defendant relied mainly upon the contention that he and Jeanette Paz were accomplices, and that her testimony standing alone is not sufficient in view of the rule requiring corroboration of an accomplice to convict. *Held,* conviction affirmed. Jeanette Paz was not the accomplice of Wallin; her testimony required no corroboration. *People v. Wallin,* — Cal. 2d —, 188 P. 2d 64 (1948).

Were it not for the fact that this case presents the comparatively infrequent situation of a principal's uncorroborated testimony convicting an accessory, rather than accessory testifying against the principal, this decision would be only another in the several century old quest for a solution to the vexing problem presented by using accomplices' testimony in evidence.[1] California here presents a solution which is not altogether satisfactory, for while it accomplishes the laudatory purpose of restricting the ease with which the guilty may escape punishment, simultaneously it exposes the innocent to injustice. Prior to 1915 the failure to corroborate the testimony of Jeanette Paz would have been fatal to the state's case, for under the then existing liberal definition of an accomplice, Jeanette Paz would have been an accomplice, and her evidence standing alone would have

[17] People v. Snyder, 241 N. Y. 81, 148 N. E. 796 (1925).

[1] See 7 WIGMORE, EVIDENCE § 2056 (3d ed. 1940).

been inconclusive.[2] With a view to limiting the broad scope of this definition which had heretofore frequently enabled criminals to evade punishment, California in 1915 amended Section 1111 of its criminal code to define an accomplice as "one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given." [3] So pithy and unambiguous a definition leaves little possibility of finding Jeanette Paz an accomplice of Wallin's. To do so would be to assert the manifest absurdity that every principal is an accessory to the same crime of which he is the principal.[4] Therefore, since we cannot charge Jeanette Paz as an accessory, we cannot designate her as an accomplice.[5] It then follows that her testimony needs no corroboration. Nor does the fact that as a practical matter convictions have been obtained against defendants as accessories, when for lack of evidence they could not be successfully prosecuted as principals, seriously weaken this reasoning. In this type of situation the position only becomes inconsistent when the attempt is made to simultaneously charge that one is both principal and accessory to the same crime.[6] Such reasoning while it hints of pragmatism is not unjust when one recalls that the convicted accessory is in fact, though not in law, guilty of a more serious crime.

A different situation might have been presented had not Jeanette Paz been convicted as a principal or had she not testified so positively as to her status as principal. In such an event it might have been possible to speculate on her status as an accomplice under the definition. The record, however, has eliminated any such possibility, leaving the court no choice.

Disagreement with this decision is difficult when one recalls that courts must apply the statutes, when their meaning is clear, as written. Therefore, technically, the decision is most correct; but practically, it leaves much to be desired. California in remedying one evil has quite possibly revived another. In weakening the traditional stringency with which the people's evidence has always been viewed, the old evil of a state's witness buying leniency may well reoccur.[7]

---

[2] People v. Coffey, 161 Cal. 433, 439, 119 Pac. 901, 903 (1911). Accomplices are: ". . . all persons concerned in the commission of a crime, whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission."

[3] CAL. PENAL CODE § 1111 (1941).

[4] People v. Chadwick, 7 Utah 134, 25 Pac. 737 (1891). This simple principle is by its very simplicity sometimes difficult to grasp. A helpful though not completely parallel analogy is to be found in the application of the felony murder statutes. There it will be recalled that while every murder includes an assault (violent or subtle) that assault is merged in the murder and may not be used as the requisite felony. People v. Wagner, 245 N. Y. 143, 156 N. E. 644 (1927).

[5] CAL. PENAL CODE § 1111 (1941).

[6] People v. Chadwick, 7 Utah 134, 25 Pac. 737 (1891).

[7] See 7 WIGMORE, EVIDENCE § 2056 (3d ed. 1940).

Nor will it always help to rest content with the protection afforded by distinguishing between convicted principals and those not yet convicted (if one not yet convicted may be classed as an accomplice). When the opinion inferred that a different solution might have been reached had Jeanette Paz not already been convicted (or confessed), one important possibility was overlooked, for it is not improbable that a principal might well agree to testify against an accomplice upon being permitted to plead guilty to a charge as principal but in a lesser degree. Thusly, Jeanette Paz might conceivably have been convicted of a second degree murder charge and still be a principal, and under California's definition not an accomplice of Wallin. In such a case her testimony might easily reflect the spirit of self-interest and not justice.

As California's definition is too narrow conversely New York's is too broad and has frequently served as a convenient shield behind which criminals have evaded just punishment. That this situation exists has not escaped notice and remedial action has been recommended.[8] While New York has not defined accomplice by legislation, repeated decisions of the courts have settled that an accomplice is one who is so connected with the crime that at common law he might have been convicted either as a principal or as an accessory before the fact.[9] From this it would appear that Wallin was unfortunate in his jurisdiction for in New York Jeanette Paz's testimony by itself would have been inadequate since she would obviously have been his accomplice.[10]

Such a situation where the chance of jurisdiction dictates the guilt or innocence of men indicted under similar facts provides a serious criticism of our system of administering justice. Basically the root of the difficulty lies in the impossibility of applying general rules in determining the probity of the evidence offered in specific cases. These definitive rules and statutes hamper rather than aid the men most capable of resolving the question and until the problem is returned to the trial court judges for solution, as was done during the common law, this dilemma shall continue to plague the courts. The judges too will err but in their experienced hands, and

---

[8] NEW YORK COMMISSION ON THE ADMINISTRATION OF JUSTICE, THIRD SUPPLEMENTAL REPORT, p. 16 (LEG. DOC. No. 77, 1937): "Present section 399 C. Crim. Proc. providing that a conviction cannot be had upon the uncorroborated testimony of an accomplice has been deleted. The committee was strongly of the opinion that this section in the present code is a refuge of organized crime and protects the principals in racketeering cases . . . . The deletion of this provision merely restores the common law and permits the trial court to give appropriate instructions in each case affecting the credibility of the testimony offered instead of binding the court to the general rule prescribed by the statute."

[9] People v. Cohen, 223 N. Y. 406, 119 N. E. 886 (1918).

[10] People v. Kudon, 173 App. Div. 342, 158 N. Y. Supp. 817 (3d Dep't 1916); N. Y. CODE CRIM. PROC. § 399.

from their advantageous observation post, a more just and uniform result will surely follow.[11]

H. V. McC.

DUE PROCESS CLAUSE—DOUBLE JEOPARDY—CRUEL AND UNUSUAL PUNISHMENT—SECOND ELECTROCUTION AFTER FAILURE OF FIRST ATTEMPT.—The petitioner, Willie Francis, a Negro citizen of the State of Louisiana, was tried and convicted of murder in September, 1945, and sentenced to death by electrocution. The prisoner was placed in the electric chair of that state on May 3, 1946. The The switch was thrown but, apparently because of a mechanical defect, death did not result. Petitioner was returned to prison. A new death warrant was issued. Applications for relief were filed in the Supreme Court of Louisiana. The petitioner claimed that the due process clause of the Fourteenth Amendment [1] protects him against double jeopardy and cruel and unusual punishment as prohibited by the Fifth [2] and Eighth [3] Amendments of the Federal Constitution. The court denied the application on the ground of lack of any basis for judicial relief. *Held,* the due process clause does protect a man against double jeopardy and cruel and unusual punishment by state action. However, a second execution after a failure of the first attempt is not double jeopardy or cruel and unusual punishment within the purview of the Fourteenth Amendment. The cruelty must be *inherent* in the method of punishment and double jeopardy involves a retrial after a valid acquittal. *Louisiana v. Resweber,* 329 U. S. 459, 91 L. ed. 422 (1947).

The court in reaching the conclusion, stated above, had three questions of Constitutional Law to determine. It was necessary to interpret the Fifth, Eighth and Fourteenth Amendments to the Federal Constitution. It first discussed the Fourteenth Amendment to determine if, through it, the Fifth and Eighth Amendments were binding upon the states.

Prior to the adoption of the Fourteenth Amendment there were no specific restrictions upon the states concerning the internal governing and administration of criminal justice. The broad terms of Article IV of the Constitution applied only to relations between states. The restrictions and limitations found in the first ten amendments apply only to federal action. The Fourteenth Amendment,

---

[11] See 7 WIGMORE, EVIDENCE § 2056 (3d ed. 1940).

[1] U. S. CONST. AMEND. XIV, 1, ". . . Nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

[2] U. S. CONST. AMEND. V, ". . . Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb. . . ."

[3] U. S. CONST. AMEND. VIII, ". . . Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."