St. John's Law Review

Volume 16, April 1942, Number 2 Article 10

Criminal Law--Evidence--Corroboration of Accomplice as to Matters Connecting Defendant with the Crime (The People of the State of New York v. Irving Nitzberg, 287 N.Y. 183 (1941))

St. John's Law Review

The problem herein involved was clearly one of extreme *national* importance, and a statute whereby a state seeks to "isolate itself from difficulties common to all of them" is definitely diametrically opposed to national unity. To employ the phraseology of Mr. Justice Cardozo, "It (the Federal Constitution) was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." [13]

E. D. R.

CRIMINAL LAW—EVIDENCE—CORROBORATION OF ACCOMPLICE AS TO MATTERS CONNECTING DEFENDANT WITH THE CRIME.—The defendant is charged with the murder of one Shuman, whose body was found in a stolen automobile in the Borough of Brooklyn. The defendant and the deceased were members of that borough's group of criminals known as "Murder, Inc.". The deceased was believed to have been conveying certain secret information to a member of the Detective Bureau and for that reason the members of the "corporation" desired to have him killed. The accused was chosen as the person to do the killing, and by a ruse the decedent was enticed into the automobile and was shot. Among three accomplices there was one by the name of Reles who testified on behalf of the State that the defendant was the murderer. To corroborate the accomplice, non-accomplice witnesses testified that the decedent did have certain conversations with a member of the police force; that the automobile in which the decedent was found was stolen from the non-accomplice witness; that a policeman was on duty at all times at the place of killing first planned; that the accomplice, Reles, was present at the apartment of one, Lepke, about whom the decedent was telling the police. At the trial, the court was requested to charge that the evidence by the non-accomplice witnesses was insufficient to corroborate the accomplice. The court so charged and added that the evidence did not tend to connect the defendant with the commission of the crime but was intended to corroborate the witness as to whether or not he was "telling the truth as to credibility." To this, counsel took objection and the court again charged that the evidence did not tend to connect the defendant with the commission of the crime but it did "tend to show, or prove or disprove, the credibility of a witness." *Held,* judgment of conviction reversed and a new trial ordered. *The People of the State of New York* v. *Irving Nitzberg,* 287 N. Y. 183, 38 N. E. (2d) 490 (1941).

There has always been a natural distrust of the testimony of an accomplice to a crime. Prior to the enactment of Section 399 of the

[13] Baldwin v. G. A. F. Seelig, 294 U. S. 511, 523, 55 Sup. Ct. 497 (1935).

Code of Criminal Procedure,[1] a conviction could be had upon the uncorroborated testimony of an accomplice alone. But the courts would instruct the jury to weigh strictly the uncorroborated testimony of the accomplice.[2] The subsequent enactment of the Statute [3] did not establish any exclusive test for the admissibility of evidence which tends to corroborate the evidence of the accomplice. Therefore, there may be no conviction unless the accomplice's testimony is corroborated by independent evidence which connects the defendant with the crime charged.[4] The court in a four-to-three decision held that the evidence in this case was insufficient to convict the defendant. There was nothing, said the majority, that identified the defendant as a participant in the crime. The evidence of the non-accomplice witnesses was also inadmissible to support the credibility of Reles since "it was on merely slight, remote or conjectural significance" and tended to surprise and prejudice the defendant.[5] The dissent by Judge Lewis contended that the non-accomplice testimony did not prejudice the rights of the defendant since it served to "confirm and give credence to the narrative."

J. A. S.

CRIMINAL LAW — PARDON — SECOND OFFENDER — EFFECT OF PARDON BY EXECUTIVE.—Relator was convicted of attempted robbery in the third degree upon his plea of guilty. The District Attorney of the county filed an information [1] accusing relator of having been convicted previously in a federal court of robbing a member bank of the Federal Deposit Insurance Corporation. Relator acknowledges his former conviction and was sentenced as a second offender.[2] Although the records establish his conviction in the federal court, it also appears from official records that two years after his conviction

---

[1] CODE CRIM. PROC. § 399 L. 1881, c. 442, as amd. L. 1882, c. 3.
"A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime."

[2] People v. Dixon, 231 N. Y. 111, 131 N. E. 752 (1921); Lindsay v. People, 63 N. Y. 143 (1875).

[3] *See* note 1, *supra.*

[4] People v. Kress, 284 N. Y. 452, 31 N. E. (2d) 898 (1940); People v. Maione, 284 N. Y. 423, 31 N. E. (2d) 759 (1940); People v. Feolo, 284 N. Y. 381, 31 N. E. (2d) 496 (1940).
A charge to the jury that if they believe "the testimony of the witness Reles [accomplice] they cannot convict on his testimony unless it is corroborated by other independent, believable evidence tending to connect the defendant with the commission of the crime," was held to be a proper charge. People v. Goldstein, 285 N. Y. 376, 34 N. E. (2d) 362 (1941).

[5] People v. Harris, 209 N. Y. 70, 102 N. E. 546 (1913).

[1] N. Y. PENAL LAW § 1943.

[2] N. Y. PENAL LAW § 1941.