PARTIES:	GORDON JAMES HARRIS
	v
	THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	APPEALS FROM SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NOS:	CA 3/95
DELIVERED:	30 August 1996
HEARING DATES:	22 and 23 July 1996
JUDGMENT OF:	MARTIN CJ, MILDREN & THOMAS JJ

CATCHWORDS:

Appeal and new trial - appeal - general principles - appeal against conviction for murder and robbery following trial - whether trial judge erred in law in directing jury as to accomplice's and indemnity - appeal allowed.

Criminal law and procedure - appeal and new trial - appeal against conviction for murder and robber - whether trial judge erred in law in directions on evidence which could amount to corroboration of the accomplice - whether trial judge erred in law in direction on the effect of an indemnity and a promise to give evidence - appeal allowed

REPRESENTATION:

Counsel:

Appellant:	S. J. Odgers QC
Respondent:	R. Wild QC

Solicitors:

Appellant:	T.S. Corish (NAALAS)
Respondent:	J.D. Whitbread (ODPP)

Judgment category classification:	B
Court Computer Code:	9407963
Judgment ID Number:	tho96007
Number of pages:	20

(tho96007)

**IN THE COURT OF
CRIMINAL APPEAL
IN THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN**

**CA 3 of 1995
(9407963)**

BETWEEN:

GORDON JAMES HARRIS
Appellant

AND:

THE QUEEN
Respondent

CORAM: MARTIN CJ, MILDREN AND THOMAS JJ

REASONS FOR DECISION

(Delivered 30 August 1996)

THE COURT

The appellant appeals from his conviction on 28 February 1995 of the following offences:

1. That on or about 20 April 1994 at Palmerston in the Northern Territory of Australia he did murder Shane Wingrave.

2. That on or about 20 April 1994 at Palmerston in the Northern Territory of Australia he did steal from Shane Wingrave a wallet, containing personal property, and immediately before or at the time of doing so did violence

upon the said Shane Wingrave in order to obtain the things stolen.

There were twelve grounds of appeal. However, grounds 1 to 7 inclusive and grounds 10 and 11 were abandoned. The remaining three are:

> "8. The Learned Trial Judge erred in his directions to the jury on why accomplices need to be corroborated and on the effect of an indemnity and of a promise to give evidence.
>
> 9. The Learned Trial Judge erred in directing the jury that the following evidence was capable of amounting to corroboration:
>
> A) Louis Bernard Taylor concerning a simulated upper-cut by the appellant;
>
> B) Louise Anne Woodley concerning bloodstained jeans of the appellant;
>
> C) Helen Frances Casey concerning ownership of the knives.
>
> Further, such propositions had not been put by the Crown.
>
> 12. The verdict of the jury caused a miscarriage of justice in that evidence which the applicant could not with reasonable diligence have discovered before his trial has now been discovered which at least gives rise to a significant possibility that the jury would have acquitted the applicant."

The background facts are as follows:

At about 8.30 am on 20 April 1994, the body of Shane Wingrave was found in parkland near the Moulden Primary School. This parkland is within close proximity to No.1 Strawbridge Crescent Palmerston. The evidence of the

pathologist, Dr Kevin Lee, is that there were 92 stab wounds of various depths and severity. In addition to the stab wounds were approximately 34 slash wounds to the neck of the deceased and other abrasive signs of marking to his body. The deceased was found with his trousers removed, his shirt was still on. There was a considerable amount of blood located around the shirt, his body and head.

The appellant and his girlfriend, Louise Woodley, were living at No.1 Strawbridge Crescent Palmerston. Also residing at this house were the appellant's mother, Mrs Casey, and some younger children. On or about 18 April 1994 Chadwick Wayne Hunt, Louis Bernard Taylor and Hunt's girlfriend, Cecile Little, took up an invitation extended to them by the appellant to stay at the house. On 19 April 1994, Hunt purchased a carton of beer. He and the appellant, Louis Taylor and John William Denham, a friend of the appellant, consumed the alcohol and smoked marijuana during that afternoon.

In the evening, the four men went to the Palmerston Tavern where they met Shane Wingrave, whom they had not previously known. The appellant and Wingrave played pool together. At approximately 9.30 pm the group returned to the house where they met up with the girls Cecile Little, Louise Woodley and Sheree Harris. Members of the group continued drinking alcohol and smoking marijuana. There was some belligerent behaviour. Hunt became annoyed with Wingrave,

who he said was staring at Hunt's girlfriend. Hunt testified that the appellant became upset and threw a bottle which landed without striking anyone. Hunt also gave evidence he and the appellant argued because the appellant did not like Louis Taylor and Hunt talking in their own "lingo". Some of the group went to bed. Hunt, Cecile Little and the appellant remained talking with Wingrave.

In the early hours of the morning of 20 April, Wingrave left the house. Hunt gave evidence that the appellant indicated he wanted to steal Wingrave's wallet and money. For this purpose they accompanied Wingrave on the pretext that they were going to retrieve some alcohol. In the parkland area near the Moulden Primary School, about 580 metres from the house, Wingrave was stabbed to death. Initially both Hunt and the appellant were suspects for the murder of Wingrave.

On 11 February 1995, Hunt signed an undertaking that he would plead guilty to the manslaughter and aggravated robbery of Wingrave. This plea was accepted by the Crown in satisfaction of the charge of murder. Hunt undertook to give truthful evidence at the trial of the appellant. His undertaking was in evidence on the trial of the appellant. Hunt gave evidence upon the trial that as he, the deceased and the appellant were walking through the parkland, the appellant asked him "are you ready?", whereupon the appellant stabbed Wingrave in the stomach, then continued stabbing him

with knives held in each hand. It was Hunt's evidence that there was no plan to use knives, he did not know that the appellant had any, and he was surprised by the attack. Hunt said he stood and watched but did not participate in the killings. Hunt testified that the appellant removed the deceased's jeans and handed him a wallet while the appellant searched through the jeans for a piece of paper upon which there was written a telephone number he had given Wingrave.

The Crown also called Cecile Little who gave evidence that when the appellant and Hunt returned to the house, the appellant, who was not wearing a shirt, was covered in blood above the waist. She was given an indemnity from prosecution upon her undertaking to give truthful evidence for the Crown at the committal in respect of Hunt and the appellant. A copy of the indemnity dated 1 July 1994 was put in evidence at the trial.

The appellant gave evidence at his trial. In summary, that evidence was as follows:

He had left the house with Hunt and Wingrave. There was no plan on his part to rob Wingrave. At a certain point a fight broke out between Hunt and the deceased. The appellant walked away. Hunt caught up with him shortly afterwards and told him that he had stabbed the deceased. He went to find the deceased and when he located his body, cradled the deceased's head in his lap. He said he saw blood

on the right side of the deceased's chest. He then got up and ran after Hunt. He denied there was blood above his waist. He stated that Hunt had informed him that he had obtained the knives from the kitchen at the house. The appellant said that he had assisted Hunt after the killing by disposing of the knives and the wallet. He denied that he had stabbed the deceased. He agreed he had originally told lies to police about the incident.

Cecile Little, knowing that both Hunt and the appellant had been involved in what appeared to be a murder, assisted them to dispose of the knives, wallet and other items. She could be regarded as being an accessory after the fact.

It was not in issue at trial that Hunt and Little be regarded as accomplices for the purpose of the required judicial warning and directions.

We now turn to deal with the grounds of appeal.

GROUND 8

"The Learned Trial Judge erred in his directions to the jury on why accomplices need to be corroborated and on the effect of an indemnity and of a promise to give evidence."

His Honour clearly directed the jury that both Hunt and Little were accomplices for the purpose of the direction he was about to give them. No complaint is made with this.

His Honour went on to direct the jury in the following terms (AB 1004-1005):

> "An accomplice has long been regarded by the law as a witness whose evidence should be treated with special caution. This is so because of the supposed tendency of an accomplice to understate or lie about his own involvement in the crime and to overstate or lie about the involvement of others. It is supposed that this tendency is occasioned by a desire, on the accomplice's part, to improve his own position at the expense of others.
>
> This reservation about the evidence of an accomplice has led to a practice having developed that requires a trial judge to warn the jury, as I now warn you, that it is unsafe to convict upon the evidence of the accomplice unless it is corroborated by some independent evidence. Corroboration in this context means evidence from a source, other than the accomplice, which confirms his evidence in a material particular and which tends to implicate the accused in the crime.
>
> It is open to you to act on an accomplice's evidence alone if you are absolutely satisfied with its reliability, but, ordinarily, corroboration should be looked for. It is open to you to consider, in the case of a particular accomplice, the extent to which, if at all, the considerations upon which the warning is based are present. In this regard, you may look at the evidence that Hunt has pleaded guilty to manslaughter and been sentenced. In the case of Cecile Little, she has been given an indemnity in the terms set out in the document in evidence.
>
> As against that, you will consider the evidence that the Crown's acceptance of Hunt's plea of guilty was conditional upon his giving evidence for the Crown. The law says that the evidence of one accomplice cannot be corroborated by the evidence of another accomplice. Accordingly, if you are looking for corroboration of Hunt's evidence, you cannot look to Cecile Little's evidence to provide the corroboration.
>
> The same is true in reverse. There is evidence which is potentially corroborative of Hunt and Little's evidence. Whether you accept such evidence, and if so whether you regard it as providing corroboration are entirely matters for you."

At the conclusion of his Honour's summing up, Counsel for the accused sought a further direction in the following terms:

1) That experience shows that once an accomplice gives a version to the police he may feel locked into it and be unwilling to tell the truth later.

2) The risk that the accomplice has told an untrue story is greater where he has been offered an immunity, or has been the subject to a threat of further legal proceedings if he does not stick to that story.

At AB 1029 counsel for the accused made the following submission:

> "..... Your Honour should have said that the risk that the accomplice has told an untrue story is greater where he has been offered an immunity, or he has been the subject to a threat of further legal proceedings if he doesn't stick to that story.
>
> Your Honour put that the other way. You see, Your Honour said what offsets the risk of the false story is the immunity in the case of Cecile and the document that Hunt signed warranting to tell the truth. ....."

Counsel for the appellant referred his Honour to the decision of *Chai v R* (1992) 27 NSWLR 153 at 178 per Badgery-Parker J who referred with approval to the direction given by Wood J which was in the following terms:

> "'There are no doubt many reasons why the evidence of accomplices may be unreliable and I am sure you can think of many yourselves. You may think it is only natural for an accomplice to want to shift the blame from himself to others, perhaps to downplay his role, perhaps to justify his own conduct. In that process the accomplice may construct an untruthful story, he may play up the part of others, he may even blame innocent people. Experience has shown that once an accomplice gives a version to the police, he may feel locked into that story and be unwilling to tell the truth later. Of course you may think, it is a matter for you, that the risk that an accomplice has told an untrue story may be greater where he has been offered a prospect of receiving some reward or immunity from prosecution either for himself or for someone else. It is a matter of common sense. Freedom from prosecution either of an accomplice or someone else who is associated with him, either here or in some other place in return for giving evidence against an accused person, may - although not necessarily will it do so - constitute an inducement or persuasion to give false evidence.'
>
> His Honour continued over two further pages to emphasise the aspects of the immunity situation in the instant case and the need for the jury to consider the significance of the immunity. In my view to describe the directions as perfunctory is absurd. They were detailed, they were carefully constructed and it is not without significance that counsel at the trial sought no re-direction. Counsel for the appellant was quite unable to make clear to this Court what more was required."

In relation to Ground 8 the submission of Mr Wild QC is summarised as follows:

(a) There is no rule of law that requires a trial judge to give a direction in the terms complained of;

(b) Whilst it may nevertheless be desirable that more than an ordinary form of direction ought to be given in a case such as the present, this depends upon the whole of the circumstances of the case; see *R v Radford* unreported

decision Court of Criminal Appeal Victoria No. 216/91 dated 28 February 1992, Crockett and Beach JJ at pp9-10:

> "Certainly an accomplice may have an incentive to lie in an endeavour to pass blame from himself to another. An indemnified accomplice's risk is, if the indemnity is conditional, that he might breach the condition so as to lead to his prosecution. Such a breach can only consist of his failure to adhere to his account given to the police. That is to say, his only motive must be assumed to be to adhere to his police statement (i.e. to tell the truth as it is perceived to be by the authorities) and thereby to avoid the risk of prosecution. Of course, if the version of events given by him to the police, even though it is one in which to some extent he implicates himself, should not be truthful, then his endeavour to comply with the condition of his indemnity could involve a desire to suppress the truth. For example, it might be said that in order to pass the principal blame for the robbery from himself, he falsely asserted that the applicant carried out the part in the offence which was in fact performed by himself. In such a case it doubtless could be said that his incentive to tell what the police considered to be the truth necessarily and at the same time involved an incentive to maintain what in fact was a false story. However the failure by the judge to explain incentives of this nature to the jury cannot, we think, be said to have led in the circumstances of this case to an injustice to the applicant. Accordingly, in this respect also we are of opinion that the jury could not have been confused or misled or insufficiently informed so as to have led to a perceptible risk of a miscarriage of justice (*Longman v. The Queen* (1989) 168 CLR 79). In that regard, it is significant that experienced counsel who appeared for the applicant at the trial took no exception to the judge's charge, a matter to which we shall refer in a little more detail shortly."

The question is whether in the circumstances of the case the failure of the trial judge to draw attention to these matters would have left the jury confused, misled or insufficiently informed so as to have led to a perceptible risk of a miscarriage of justice or whether for any other

reason in the circumstances there is any injustice to the appellant.

(c) All of these issues were fully laid out to the jury throughout the trial in various ways and consequently the jury could not have been confused, misled, or insufficiently informed. Examination of the transcript reveals that the significance of these matters was thoroughly tested in cross examination of both accomplices.

We were directed by counsel to some of the passages in the transcript but indeed there are many more and it is necessary to read the whole of the cross examination of Hunt from AB 774.8 to the bottom of AB 777, Hunt's re-examination at AB 793, Little's cross examination from AB 853-861, the questions from the jury to the trial judge from AB 940, the instructions of the trial judge to the jury from AB 944-945, Ross QC's address at 982 to 985 and the last passage at 986 and the first passage at 987, the judge's summing up at 1004-1005 and at 1026.

Taking all of that into account we would not have thought that there was any miscarriage of justice, except for one matter. At AB 1005, his Honour said:

> ".... It is open to you to consider, in the case of a particular accomplice, the extent to which, if at all, the considerations upon which the warning is based are present. In this regard, you may look at the evidence that Hunt has pleaded guilty to manslaughter and been sentenced. In the case of

> Cecile Little, she has been given an indemnity in the terms set out in the document in evidence.
>
> **As against that**, you will consider the evidence that the Crown's acceptance of Hunt's plea of guilty was conditional upon his giving evidence for the Crown. ...."

We think the use of the words "as against that" had the tendency to have misled the jury into thinking that the judge was implying that the accomplices could be trusted because they promised to tell the truth. In other words, he was refuting the submission of counsel for the appellant, as well as what plainly flowed from the evidence in cross examination, that a witness who makes such a promise understands and is understood by his promise to agree to give evidence in accordance with his previous statements, is locked into repeating a version which may not in fact be true. The trial judge should have said "in addition to that" instead of "as against that" and we think this was a misdirection. Having regard to the importance of Hunt's evidence, in particular, to the Crown's case, and the fact that the judge did not himself fully and clearly explain the relevant reasons for the jury to be cautious, we think this misdirection means that the appeal must be allowed and there should be a re-trial.

It is not necessary to consider the other grounds of appeal. However, we think that that appearing in ground 9 is deserving of some attention. It reads:

GROUND 9

"The Learned Trial Judge erred in directing the jury that the following evidence was capable of amounting to corroboration.

A) Louis Bernard Taylor concerning a simulated upper-cut by the appellant;

B) Louise Anne Woodley concerning bloodstained jeans of the appellant;

C) Helen Frances Casey concerning ownership of the knives.

Further, such propositions had not been put by the Crown."

In his summing up to the jury, his Honour directed as follows (AB 1005):

> "Without necessarily being exhaustive, potential corroboration of Hunt's evidence and Cecile Little's evidence can be found in Taylor's evidence of the upper-cut demonstration; Louise Woodley's evidence of seeing bloodstains on Harris' jeans, and Mrs Casey's evidence that the knives came from her kitchen and that Harris had knowledge of their whereabouts.
>
> All those pieces of evidence come from a source other than Hunt or Little, and are capable of providing corroboration of their evidence. Whether you accept those pieces of evidence, and if so, whether you regard them as corroborative remain matters for you."

Counsel for the accused took objection at the conclusion of his Honour's summing up and submitted those three items could not amount to corroboration. It was his submission that none of them amounted to evidence that the crime was committed by the accused and thus could not amount to corroboration:

> "The essence of corroborative evidence is that it 'confirms', 'supports' or 'strengthens' other evidence in the sense that it 'renders [that] other evidence more probable': *Reg. v. Kilbourne* [1973]

A.C. 729 at p 758, per Lord Simon of Glaisdale. It must do that by connecting or tending to connect the accused with the crime charged in the sense that, where corroboration of the evidence of an accomplice is involved, it 'shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused': *R v Baskerville* [1916] 2 K.B. 658 at p 667."
Doney v The Queen (1990) 171 CLR 207 at 211

(1) Louis Bernard Taylor concerning a simulated upper-cut by the appellant

Mr Taylor gave evidence (AB 741-742) that he had gone to bed and woken up early in the morning of 20 April 1994. He walked into a bedroom and saw Hunt and the appellant talking. He stated (AB 742):

"Do you know what they were talking about?---No.

Did you see anything occur while you were in that room?---Yeah, I seen Gordon upper-cut. He showed how he upper-cutted Shane.

Can you just, if you would, demonstrate for His Honour and the jury what you saw?---He just went like that."

Under cross examination, he said (AB 745):

"All right. What you say is that you saw Mr Harris make an upper-cut motion the following day?---Yes.

If he did that you don't really know what it was about, do you, looking back on it nearly a year ago. Is that right?---No.

Not right or didn't happen?---Don't know what it was about."

We accept Mr Wild QC's submission that it would have been open to the jury to have accepted Taylor's evidence in chief. To this extent there was evidence supporting the evidence of Little about the upper cut demonstration. However, this evidence does not amount to corroboration in law. A careful examination of Little's evidence leaves it quite unclear as to precisely what she was talking about. She said she had had a conversation with the accused in which the accused told her, amongst other things, that Hunt was the one who had committed the murder. She then says that there was a conversation the next morning in which she Hunt and Taylor were present. From the bottom of AB 838 it appears that the appellant was also present, but it is quite unclear as to who it was that was making the demonstration. It seems to have been accepted that it was the appellant. However, even if it were the appellant who was giving the demonstration, it is quite unclear whether he was demonstrating how he hit the deceased or how Hunt had hit the deceased. (The implication is that the deceased had been hit immediately before the attack).

Hunt's account in evidence in chief, makes no mention of any assault on the victim before the stabbing and he denies any assault on the victim in cross examination. The evidence is therefore incapable of corroborating Hunt's account. The appellant gave evidence that the punch was thrown by Hunt. As to the conversation in the room the following morning, the appellant denied that Taylor was

present, denied that he demonstrated anything in the room, denied that the first blow was an upper-cut with a broad based knife and that he was the one who delivered it.

In these circumstances we cannot see how Taylor's evidence is corroboration of the evidence of either Hunt or Little.

(2) Louise Anne Woodley concerning bloodstained jeans of the appellant

Evidence was given by Cecile Little that when the appellant returned to the house he was covered in blood from the waist up. Hunt gave evidence that the appellant had blood all over him (AB 767). The appellant denied that he had blood on his jeans; his evidence in chief was:

> "One suggestion that she made was that you had blood on you; blood all over your upper body. You heard her say that, did you?---Yeah, I heard her say it.
>
> Do you know whether you did or not?---It couldn't been blood all over me because I know how much I seen on him.
>
> Beg you pardon?---I know how much I seen on him.
>
> Was there much?---No, there was only a bit on his right side of his chest.
>
> That is really not what I'm asking you. I'm asking you whether you did have blood on you?---No, I couldn't have, no.
>
> MR CATO: Sorry, I was - - -
>
> MR ROSS: He said he didn't have blood on him."

and at AB 902:

> "Now you saw the blue jeans that were produced in court?---Yeah I seen them, yeah.
>
> Is there some staining on them?---Yes.
>
> What does that staining come from?---Just painting and that.
>
> Mr Harris, do you do a fair bit of art work?---Yes.
>
> Drawing and painting?---Yes.
>
> Do you know if there was anything else that caused the stains on the trousers, apart from paint?---Probably ink.
>
> Did you ever, as far as you are aware, have any blood on them?---No.
>
> Did you ever have any blood of Shane Wingrave on those jeans?---No.
>
> From the time when you wore them on the 19th and 20 April, until you came back from fishing with your father on the Saturday or Sunday?---Sunday.
>
> Yes. Were those jeans washed?---No, they wasn't washed."

In cross examination his evidence on this topic was as follows:

> "But you'd seen blood on him hadn't you?---Yeah, on his right side of his chest.
>
> Did you get any blood on you at all during this incident?---I don't think so, no.
>
> Did you have a shower when you got back to the house?---No.
>
> I put it to you that you did?---I didn't.
>
> Did you wash your jeans?---I didn't wash my jeans.
>
> Did you wash any of Chad's clothes?---Never touched his clothes."

and later:

"Did you say to her that you had got blood on you because you'd moved the body?---I never said anything about moving no body.

I suggest to you Mr Harris that you said that because you were wanting to explain to Cecile the blood that you had on you when you entered the house earlier that evening?---I never talked to her anything about no body or no blood on me, because I had nothing on me.

You are quite sure you had no blood at all on you, Mr Harris?---Yes, I'm quite sure."

The forensic biologist, Joy Kuhl, gave evidence in examination in chief:

"The jeans from Harris?---The jeans from Harris were very stained and full of grit and sand. The material was also very stiff, so I formed the impression that the item had been immersed in salt water. As they were being examined a lot of sand and grit fell out of them and they had the feeling that that sort of material gets when you've worn them in the sea. It wasn't possible to differentiate any discreet areas of staining except for some washed-out looking discreet stains inside the pockets. No areas tested gave positive results to the normal screening tests for blood, but most of the samples cut out from the item - so I cut little samples out from various areas - gave positive results when subjected to the direct test.

When you say - are you able to say however whether those positive results are human or animal blood?---I can't even say that it's definitely blood, all I can say is the screening test for blood was positive when performed in this manner, but attempts made to extract DNA were just totally unsuccessful."

and under cross examination:

"MR ROSS: Ms Kuhl, it goes without saying, doesn't it, from what you say, that on the jeans of Mr Harris nothing could be attributed to them that could be associated with Mr Wingrave?---That's correct, yes.

On your test about looking, feeling and smelling, they didn't look as if they'd been washed for a long

time. Would that be right?---Well, the - if they had been washed, they'd been used after being washed.

Yes, and they showed signs of, I think, salt water?---Yes. Of course, I can't test for that but that was an opinion.

No, but that was your experience, was it?---That was my opinion, yes.

Salt water, sand and plenty of dirt?---Correct, I've called it, yes."

The relevant evidence of Louise Woodley is that she saw trousers that belonged to the appellant in the bathroom at the house, that she saw blotches that looked like blood stains on the trousers to the side at the front of the legs. She had trained as an aboriginal health worker and said that the blotches looked like blood stains to her. She conceded in cross examination that she could have mistaken paint on the jeans for blood.

The evidence of Louise Woodley is at the most speculative and is not capable of providing corroboration that the appellant had the blood of the deceased or any blood at all on his jeans.

(3) Helen Frances Casey concerning ownership of the knives

Evidence was given by Mrs Casey, mother of the appellant, that the knives were kept in a small cupboard near the sink in the kitchen. There was no doubt that the knives came from the house and that the appellant had knowledge of

their whereabouts. Mrs Casey gave evidence that she had seen the appellant use the larger of the two knives to cut meat. The defence case was that Hunt took the knives unknown to the appellant or anyone else. There is no direct evidence that Hunt knew where the knives were kept or that he had previously used the knives. There is evidence Hunt was staying in the house. The knives were kept in a cupboard in the kitchen where they could be expected to be kept.

We agree with the submission by counsel for the appellant that the fact the appellant had the opportunity to obtain the knives does not tend to connect the appellant with the crime charged, given that the person asserted by the defence to have committed the crime had a similar opportunity to obtain and use the knives. As potential corroboration this evidence is neutral.

Whether taken alone or together, the three items of evidence relied upon by the trial judge do not amount in law to evidence capable of corroborating the evidence of either accomplice.

The appeal is allowed. Order that there be a new trial.
