"CORROBORATION" RE-EXAMINED

I. INTRODUCTION

THE recent decision of the Singapore High Court in *P.P.* V. *Tea Eng Chan & Ors*[1] raises interesting questions about the nature of "corroboration" in the law of evidence in three jurisdictions that have enacted Evidence Acts based on Sir James Fitzjames Stephen's original Indian Evidence Act, namely, Singapore,[2] Malaysia[3] and Brunei.[4]

In *Teo,* four accused were jointly tried on charges of "aggravated" rape on a girl of 16 known as "Kay", having put her in fear of hurt to herself, and which were punishable under section 376(2) of the Penal Code. The facts as found by the trial judge, Coomaraswamy J., were, briefly, that: a day after the accused Teo had befriended the complainant, he attempted to make sexual advances to her unsuccessfully; two days later, on her way home from work in the late evening, she was offered by the accused Ng a lift in Sim's van, and Ng, Yap and Teo accompanied her with Sim. She met Sim and Yap for the first time that evening. However, Sim made a detour to a deserted quarry, where each of three of the men (not Yap) threatened to beat her or call up the others if she did not go into the lorry's cabin and have sex with them there. Out of fear, she complied, and after they had all had intercourse with her, they drove *off* with her and took her home.

On reaching home, she remained silent in the face of many questions from her mother, had a bath and went to bed. Later a fear of the risk of pregnancy gripped her and she left home quietly to see a lady doctor nearby early the next morning. She explained to the doctor that she had been gang-raped, giving details. The doctor then gave her a note with which she went to a police station and lodged a report. Other material points that emerged at the trial were that Kay had no physical injuries after the incident; one or more of the accused had, in the presence of the others, told a friend (called as a witness) that same evening about the events of the evening, including the fact that Kay had screamed and cried and put up a little resistance; all the accused admitted having had sex with Kay but denied it was without Kay's consent, or that the consent was obtained by putting her in fear of hurt.

The Court convicted three of the accused of aggravated rape as charged and Yap of the lesser offence of simple rape. The trial judge, *inter alia,* accepted Kay as a witness of truth, and also found her evidence, as a complainant in a rape case, "more than adequately corroborated" by her statement to her doctor within 14 hours after the events, and being made "as speedily as could reasonably in the circumstances be expected of her"; and, having regard to her youth

[1] [1988] 1 M.L.J. 156.
[2] Evidence Act, Cap.97, 1985 (Rev. Ed.).
[3] Evidence Act, 1950 (Revised-1971), Act 56, Laws of Malaysia.
[4] Evidence Act, Cap. 108, Laws of Brunei (Rev. Ed.)., 1984, vol. VII.

and inexperience, her relationship with her family and her ignorance of making complaints to the police, he accepted her reasons for not making a complaint before seeing the doctor. He ruled that the complaint to the doctor was corroboration for the purposes of section 159 of the Evidence Act, and was adequate corroboration under Singapore law and "going much further than merely showing consistency". He further found that the police report was equally a corroboration of Kay's evidence. Finally, the conversations of three of the accused with a witness as to the events of the same evening were also held to constitute corroboration against those three accused. The absence of injury he disregarded as evidence of consent in view of the threats made to force her to submit.

The decision raises a number of important questions: What is the meaning of "corroboration" in the Evidence Act? Does the requirement of corroboration differ from that in English law? Can so-called "self-corroboration" in the form of previous statements, such as complaints, ever be treated as "corroboration" in the Evidence Act jurisdictions? To answer these questions, one must examine English law as it stood just before the Indian Evidence Act of 1872 was enacted, and the interpolations, if any, of Stephen, the draftsman of the original Indian Evidence Act.

II. WHAT is "CORROBORATION"?

> "Merely corroborative detail, intended to give artistic verisimilitude to an otherwise bald and unconvincing narrative."
>
> - W.S. Gilbert, *The Mikado*

The term "corroboration" is not defined in the Evidence Act; nor does the Act set out the situations which require corroboration either as a matter of law or as a matter of practice or prudence. Sections 135, 147 and 158-60 employ the term as if it were well-understood and required no explanation. One must inevitably turn to case-law to cast light on the term; and the Act appears to permit reference to the common law insofar as it is not inconsistent with the Act.

The accepted meaning of corroboration in Singapore and Malaysia is found in the classic statement of Lord Reading C.J. in *R.* v. *Baskervillein* 1916:

> "We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that a crime has been committed, but also that the prisoner committed it".[5] This definition has been accepted and applied, either expressly, or impliedly, in numerous cases of the Singapore and Malaysian courts.

"Independent" evidence is said to be evidence not merely deriving from the witness himself or herself, such as a previous statement made by him or her to anyone else, or the distressed condition alone of the complainant; for this would be "self-corroboration". It may be found in a plurality of witnesses of fact: it may come from another witness

[5] [1916]2K.B. 658

who can testify to a fact in issue he has observed or to relevant facts which tend, circumstantially, to prove a fact in issue. In every case, it must tend to connect the accused with the crime. Thus, in *R* v. *Redpath,* on an indecent assault charge, the distressed condition of the complainant was capable of corroborating the complainant, but only in circumstances where the complainant was also observed emerging from a moor seconds after the appellant (accused) had left it, for this tended to corroborate evidence of the identity of the assailant.[6] In a prosecution for rape, corroboration is ordinarily required of the allegation of rape (penetration and lack of consent) and of the identity of the assailant, where the charge is totally denied. So, in *P.P* v. *Mohamed bin Majid*,[7] a Malayan High Court held that where there was no independent evidence that the accused was the assailant, even where sexual intercourse without consent had been satisfactorily proved, it was unsafe to convict.

It has also been repeatedly held that informal admissions by the accused could constitute independent evidence against him, and so constitute corroboration. There are dicta that "independent" evidence must be from an unbiased witness, with no interest in the success or failure of a case in court,[8] but it is more correct to say that "independent" evidence is simply any evidence from a source extraneous to the witness himself.

The first Singapore case in which *Baskerville* was applied was the leading case of *R.* v. *Lim Yam Hong*[9] in the Straits Settlements Court of Appeal in 1919. Here, where the accused was convicted of retaining stolen property (rubber), the court quashed the conviction, holding that the rubber had not been identified as stolen and that there was no independent corroboration of an accomplice's evidence of the kind required. The principles laid down in *Baskerville* were set out and approved *in toto.*

This approach was also taken in several other Singapore cases,[10] Malayan[11] and North Borneo[12] cases. In all these, the test in *Baskerville* was applied or approved, either by citation *of Baskerville* itself, or by applying the earliest local case that had applied *Baskerville*, namely, *Lim Yam Hong.*[13] In addition, there have been many cases in which the *Baskerville* test was implicitly applied, without the case being actually cited.[14] The test has recently received re-affirmation and a new vitality in England in the 1982 case *of R.* v. *Beck.*[15]

6 (1962)46 Cr. App. Rep. 319.
7 [1977] 1 M.L.J. 121.
8 See: *Karthiyayani & Anor.* v. *Lee Leong Sin & Anor.* [1975] 1 M.L.J. 119,120.
9 (1921) 14S.S.L.R. 152.
10 *R.* v. *Captain Douglas Man* [1946] M.L.J. 77; *Syed Jaffar* v. *R* [1948] M.L.J. 148; *Karuppiah* v. *R* [1949] M.L.J. 75 (note); *Tay Choon Nam & 2 Others* v. *R* [1949] M.L.J. 157; *Koh Eng Soon* v. *R* [1950] M.L.J. 52; *Goh Liong Lam & Ors.* v. *R* [1958] M.L.J. 254.
11 *J.H.A. Trowell* v. *P.P.* [1946] M.L.J. 41; *Kassim bin Jantan & Anor.* v. *P.P.* [1949] M.L.J. 70; *Mohamed Hassan* v. *P.P.* [19521 M.L.J. 5; *Mat bin Awang Kechik & Ors.* v. *P.P.* [1959] M.L.J. 216; *Dowse* v. *Attorney-General, Federation of Malaya* [*1961*] M.L.J. 249 (Privy Council); *Chua Sin Teng & Ors* v. *P.P.* [1963] M.L.J. 150; *Din* v. *P.P.* [1964] M.L.J. 300; *Mohamed Ali & Anor.* v. *P.P.* [1965] M.L.J. 261; *Ah Mee* v. *P.P.* [1967] 1 M.L.J. 220.
12 *Mangi Anak Limban* V.*R* [1954-5] S.C.R. 65; *Jamarah bin Mualam* V.*R* [1960-63] v. *R* [1954-5] S.C.R. 65; *Jamarah bin Mualam* v. *R* [1960-63] S.C.R. 175.
13 *Supra*., note 3.
14 See: *R.* v. *Velayuthan* [1935] M.L.J. 277, 279; *Lee Mion* v. *P.P* [1934] M.L.J. 124; *Fuan Ah Fock* V.*R* [940] M.L.J.Rep. 199; *Lim Kwee Geok* v.*R* [1953] M.L.J. 50; *Chiu Nang Hong* v. *P.P.* [1965] 1 M.L.J. 40, 42 (Privy Council); *Tan Kheng Ann & Ors.* v. *P.P* [1965] 2 M.L.J. 108.
15 [1982] 1 All E.R. 807, 815 (Ackner, L.J.).

A. Pre-Baskerville Law

However, the *Baskerville* test was never the only test in English law. Before *Baskerville,* three views were competing for attention.

By the broad view, corroboration was independent evidence tending to verify any part of the suspect witness's testimony. Thus, Joy C.B. thought it "may be anything which induces a rational belief in the mind of the jury that the narrative [of the accomplice] is in all respects a correct one."[16] As late as 1910, in *R.* v. *Graham,* in a case of carnal knowledge of a girl under sixteen, Channell J. said in a dictum, "Undoubtedly there was corroboration of parts of the girl's story. For instance, the doctor negatived the possibility of the use of mechanical means; and under the circumstance, that was corroboration of a part of her evidence, although it was not corroboration of the part in which she put the blame on the prisoner."[17]

The very narrow view, on the other hand, was that corroboration was to be of the whole of the suspect testimony; but this view found few adherents, as it would then become unnecessary to have the suspect testimony in the first place.[18]

Several old nineteenth century cases[19] had advocated a formula corresponding to the *Baskerville* formula rather than the broad view, but it was not until *Baskerville* itself that the present approach became the accepted one and remained so. In *R.* v. *Everest,* Darling J. put the question picturesquely:

> "It is not sufficient that there should be corroboration in some particular which does not touch the prisoner. Suppose an accomplice to say that it was a black pig that had been stolen, and that it had been stolen on a Wednesday. To call a witness to prove that these facts were true would only be corroboration of the story of the accomplice, but not of the guilt of the prisoner."

III. COMPLAINTS

"What I tell you three times is true"

- Lewis Carroll, *The Hunting of the Snark*

A. Common Law

At common law, a complaint was always substantive evidence *(i.e.,* evidence of the facts contained in it provided it could be categorized as one of the following:[20]

16 Joy, *Evidence of Accomplices,* p.8. See also *R* v. *Birkett* (1839) 8 C & P 732; and *R* v *Graham (1910) 4* Cr.App.R. 218

17 (1910) 4 Cr.App.R. 218, 221.

18 *R.* v. *Tidd* (1820) 33 State Tr. 1483; *R* v. *Mullins* (1848) 3 Cox C.C.526; And see J B Norton, *Law of Evidence Applicable to the Courts of the East India Company,* (2nd, ed., 1859).

19 See the many cases cited in *R* v. *Baskerville* and by J.B. Norton, *op.cit* such as *R* v *Stubbs* 1 Dears 555; *R.* v. *Farler* (1837) 8 C. & P. 106; *R.* v. *Everest* (1909) 2 *Cr.App.R.*

20 See, generally, *Cross on Evidence* (6th edn.), p.263

(a) a part of the *res gestae*;[21]
(b) a dying declaration;[22]
(c) statements in the presence of a party.

In criminal prosecutions for sexual offences, complaints were, historically, considered necessary to be proved as their absence raised a presumption against the complainant. As Hawkins pointed out:

> "It is a strong, but not a conclusive presumption against a woman, that she made no complaint in a reasonable time after the fact."[23]

The law prohibited proof of the particulars (or "terms") of a complaint to prove the truth of the statement. Only the bare fact of the complaint being made was received as confirmatory of the evidence of the complainant.[24] It was also clear that in the absence of the complainant at the trial, the complaint itself was inadmissible, as it was merely "confirmatory" evidence.[25]

Taylor states the rule as it stood at the time (1878):

> "It would seem also that, in prosecutions for rape, proof that the woman shortly after the injury complained that a dreadful outrage had been perpetrated on her, would in the event of her death, be receivable as independent evidence; and if the prosecutrix were called as a witness, such complaints would *a fortiori* be admissible as tending to confirm her credit. In no case, however, can the *particulars* of the complaint be disclosed by witnesses for the Crown either as original, or as confirmatory evidence, but the details of the statement can only be elicited by the prisoner's counsel on cross-examination."[26]

This rule barring the terms of the complaint had been criticised by Parke B.[27] and by Taylor,[28] who considered that if the complainant were able to relate all that she had said in making the original complaint, such evidence would furnish the best test of the accuracy of her recollection when she testified at the trial. Strangely, Parke B.'s criticism was taken as authority for the proof of the particulars of the complaint[29] by some judges in subsequent cases. Stephen recorded that in his view, such a practice accorded with common sense.[30]

It was not until *R.* v. *Lillyman* in 1896 that the law on complaints was clarified and settled. Here the English Court of Criminal Appeal

21 *R.* v. *Guttridges* (1840) 9 C. & P. 471; *R.* v. *Lunny* (1854) 6 Cox C.C. 477.
22 *R.* v. *Perry* [1909] 2 K.B. 697.
23 William Hawkins, *A Treatise of the Pleas of the Crown,* vol.1 (6th ed. by Thomas Leach, 1777), Ch.41, sect. ed.3. See also Edward Hyde East, *Pleas of the Crown* (1803 ed.), Chap. X, 445-6.
24 *R* v. *Megson* (1840) 9 C. & P. 420; *R* v. *Clarke 2* Stark. 241; *R* v. *Nicholas* (1846) 2 C. & K. 246; *R* v. *Osborne* (1842) C. & M. 622 (following a robbery case, *R* v. *Wink* (1834) 6 C. & P. 397, where the name of the alleged robber given to a constable was disallowed).
25 *R* v. *Guttridges* (1840) 9 C. & P. 471 *(per* Parke B.); *R* v. *Nicholas* (1846) 2 C. & P. 246.
26 John Pitt Taylor, *A Treatise on the Law of Evidence,* Vol.1 (7th ed., 1878), p.497.
27 *R. v. Walker* (1839) 2 M. & Rob.212.
28 *Op.cit.,* p.498.
29 Stephen's Digest notes that Willes, J. vouched Parke B. as his authority, and the rule was subsequently followed by Lord Bramwell, Stephen, J., A.L.Smith, M.R. (when he was a puisne judge) and Cave, J.: Sir James Fitzjames Stephen, *A Digest of the Law of Evidence* (12th ed., 1948), Note 1 to Article 10.
30 *R* v. *Lill*yman [1896]2Q.B. 167, 176, *per* Hawkins, J., quoting Note V to Article 8 in an older edition of Stephen's Digest. Also see two cases in which Stephen's view was acted upon, and cited by Hawkins, J.: *R* v. *Eyre, 2* F& F579; *R* v. *Wood,* 14 Cox C.C. 46.

concluded that the whole statement of a woman containing her alleged complaint, including its particulars, and made shortly after the alleged occurrence, might be given in evidence, not as evidence of the truth of the complaint or of the statements of fact on which it was based, but of the consistency of the story told by the complainant in the witness-box, and as negativing consent.

Hawkins, J., delivering the single judgment of the court (consisting of Lord Russell, C.J., Pollock, B., Hawkins, Cave and Wills, JJ.) said:

> "After very careful consideration we have arrived at the conclusion that we are bound by no authority to support the existing usage of limiting evidence of the complaint to the bare fact that a complaint was made, and that reason and good sense are against our doing so."[31]

As a final gloss on the rule, the Court for Crown Cases Reserved in *R.* v. *Osborne*[32] (a case of indecent assault of a girl under thirteen) decided that the reasoning in *Lillyman* applied equally to other parts of the complainant's story, besides the allegation of lack of consent, and thus, complaints were admissible in any case as evidence of consistency, even where consent was not in issue.

In rape cases, it appears settled at common law that the fact that the prosecutrix (complainant) has made an early complaint will be important as supporting her case by showing consistency of conduct on her part.[33] An "early" complaint will necessarily be one that "was made as speedily after the facts complained of as could reasonably be expected".[34]

Although there is some authority for saying that the terms of a complaint are admissible in all criminal cases where violence is alleged, complaints are clearly admissible in trials for sexual offences, in evidence-in-chief.[35]

It also appears settled that such complaints were not evidence of the truth of their contents and so, not capable of being "corroboration" in the sense required in *Baskerville's* case; such a complaint could still only amount to self-corroboration, and not independent evidence.[36]

The Criminal Law Revision Committee recommended the abolition of any special limitations on the admissibility of the terms of a complaint, favouring general admissibility as evidence of the facts complained of where the complainant gave evidence, and admissibility even if the complainant did not give evidence, with matters like

[31] *R* v. *Lillyman, supra,* at p. 177.
[32] [1905] 1 K.B. 551.
[33] *R* v. *Cummings* [1948] 1 All E.R. 551 (cited in *P.P.* v. *Teo Eng Chan & Ors.* [1988] 1 M.L.J. 156.)
[34] *R* v. *Lillyman (supra,* note 30), at p. 171; *R.* v. *Cummings (supra)* at p. 552.
[35] See the summary of the present law in *Cross on Evidence* (6th ed.), at pp. 261-2.
[36] *R* v. *Whitehead* [1929] 1 K.B. 99. At p. 102 Lord Hewart, C.J. said of a female complainant in a trial of a charge of unlawful intercourse with a girl under sixteen, that "the girl cannot corroborate herself, otherwise it is only necessary for her to repeat her story some twenty-five times in order to get twenty-five corroborations of it."

failure to make it at the earliest opportunity or making it in answer to leading questions, going only to the weight of the evidence.[37]

B. Position under the Evidence Act

It was earlier pointed out in this paper that Stephen, the draftsman of the Act on which Singapore's Evidence Act was founded, favoured admissibility of the particulars of a complaint as being "sensible", whatever the prevalent view in English law might have been. Thus, perhaps, Stephen, in drafting the Indian Evidence Act, made allowance for his view and allowed for the admissibility of complaints as "corroboration" in section 157.[38] This was also the view of Taylor.[39]

Stephen's scheme was two-pronged. The fact of the making of a complaint was a "relevant fact", namely, evidence of conduct, under section 8.[40] Here, the terms of the complaint would not be "relevant".[41] However, the statement containing the complaint itself (including its terms, presumably), would be provable as "corroboration" under section 157.

C. Scope of section 157 (section 159, Singapore)?

The section was clearly intended to make statements provable to "corroborate" testimony. In an earlier edition[42] of *Cross on Evidence,* the view was stated that section 157 of the Indian Evidence Act embodied the old (broad) view that confirmation of any part of a witness's testimony could be "corroboration". Thus, it seems clear that "corroboration", in this context, is to mean confirmation of the witness's story, rather than independent evidence implicating the accused.

D. Elements of the Section

The section states:

> "In order to corroborate the testimony of a witness, any former statement made by such witness, whether written or verbal, on oath, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

It is submitted, first, that this section is not an "admissibility" section, which in the scheme of the Act, would require a fact to be declared a "relevant fact". This section, instead, only states the use to be made of such testimony. It does not make a previous statement admissible, or it may have the effect of making previous statements made out of

[37] Criminal Law Revision Committee, *Eleventh Report* on Evidence (General), 1972 (H.M.S.O., Cmnd.4991), para.232

[38] Section 159 in the Evidence Act, Cap.97, 1985 (Rev. Ed.).

[39] *Op. cit*., p. 498.

[40] See section 8 and illustrations (j) and (k) thereto. Illustration (k) is apparently based on *R* v. Wink(1834) 6 C. & P. 397.

[41] Section 8 (*op. cit*.), *Explanation 1* reads:
"The word 'conduct' in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act."

[42] Rupert Cross, *Evidence* (5th ed., 1979), p. 201, note 18.

court, evidence of the facts stated, which would admit hearsay, outside of the intended hearsay exceptions, in sections 17-39.[43]

Second, the section applies to two types of former statements: a statement relating to the same fact as the testimony (a) at or about the time when the fact took place, or (b) before any authority legally competent to investigate the fact. The latter limit would certainly (and does) permit the use of first information reports, but it is uncertain if it would allow proof of complaints to magistrates or statements to authorities with powers of inquiry but not of investigation. The former would place a limit of proximity in time to the facts spoken of. In a Sri Lankan case, Malcolm Perera J. said the statement must be made when a reasonable opportunity for making it presents itself: it should be made as early as can reasonably be expected in the given situation of a case and before there was an opportunity for fabrication or tutoring.[44] In *Tea Eng Chan* itself, Coomaraswamy, J. said, "The expression "at or about the time the fact took place" is not to be limited in terms of hours or days. It is limited by the terms "first reasonable opportunity" or "as speedily as could reasonably be expected". His Lordship did not specify where these terms were set out, but the second term is clearly derived from the language of *Lillyman*,[45] and the first is an acceptable paraphrase of the second, or a derivation from the complaints in sexual offences cases generally.

Two older cases of 1935 supported the view that in order to corroborate the testimony of a witness, a former statement made by a witness was, if it related to the same fact at or about the time when the facts took place, "provable" under section 157; and that the position was different from English law. The first was *R.* v. *Koh Soon Poh,*[46] a decision of the Straits Settlements Court of Criminal Appeal, on an appeal from Singapore. The second was *R.* v. *Velayuthan*,[41] also a decision of the Straits Settlements Court of Criminal Appeal. Although *Velayuthan* did not refer to *Koh Soon Poh,* it ruled that unlike the position in England, where a complainant (or prosecutrix) cannot corroborate herself, a judge was justified in referring to an immediate complaint in a sexual offence case as "corroboration". Neither case, however, explains what fact or facts exactly the statement was corroborative of. In *Koh Soon Poh,* the court was satisfied that a notebook kept by a witness who was an accomplice to abetment of forgery, corroborated his "verbal testimony". Was this corroboration of the entirety of his testimony? Did it go beyond adding credibility to his testimony?

[43] In Singapore, the hearsay exceptions extend to section 41.
It should be noted also, that section 377 of Singapore's Criminal Procedure Code Cap. 68, 1985 (Rev. Ed.), added by Act 10 of 1976, states:

> "In any criminal proceedings *a statement other than one made by a person while giving oral evidence in those proceedings* shall be admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of any provision of this Code or any other written law, but not otherwise."

(words underlined by the writer). This makes all hearsay, including previous statements of a witness, inadmissible unless made admissible by the Code, Evidence Act, or other written law. Arguably, this even abolishes common law hearsay exceptions, and clearly conflicts with section 2(2) of the Evidence Act. For present purposes, suffice it to say that section 159 of the Singapore Act is *not* such a section contemplated by the above section 377 of the Code making previous statements admissible as evidence of their contents.

[44] *Tennekoon* v. *Tennekoon* (1975) 78 N.L.R. 13, 18.

[45] *R. v. Lillyman* [1896] 2 Q.B. 167, 171 *(per* Hawkins, J.), also applied in *R* v. *Cummings* [1948] 1 All E.R. 551, which was cited by Coomaraswamy, J..

[46] [1935]M.L.J. 120.

[47] [1935JM.L.J. 277.

In *Teo Eng Chan,* now only the third case to hold this view on section 157, the learned trial judge may have been aware of these earlier cases although he did not cite them; but he also did not clarify what he thought the complainant's complaint was corroborative of. Could it have been corroborative of absence of consent, since consent was indeed in issue? Or was it corroborative only in the sense that it showed the consistency of her story?

There are, however, several cases that take the contrary view that section 157 does *not* allow a statement to be used as "substantive" evidence or independent evidence in the "*Baskerville"* sense.[48]

In one case, *J.H. A. Trowell v. P.P.,* where entries in account books were sought to be used as corroborative of an accomplice's evidence, Home, J. ruled that:

> "Although section 157 of the Evidence Enactment renders such entries admissible "to corroborate the testimony of the witness", when admitted they only shew that the witness is consistent and do not amount to the kind of corroborative evidence which is required when an accomplice becomes a witness for the prosecution."[49]

He further reiterated that corroborative evidence must be independent testimony in the *Baskerville* sense; and distinguished *R* v. *Koh Soon Poh,* which he considered binding on him, on the ground that "in that case, *R* v. *Baskerville* is not referred to at all" and that the Court there accepted the entries in the book in question "as corroborating the accomplice's verbal testimony", and not as evidence of the fact stated in the entries. In Home, J.'s view, "this case has not altered the law in any way".

In *Karthiyayani & Anor.* v. *Lee Leong Sin & Anor.,* Raja Azlan Shah, F.J. (as he then was) in the Federal Court of Malaysia, said of section 157 of the Malaysian Evidence Act:

> "The section adopts a contrary rule of English jurisprudence by enacting that a former statement of a witness is admissible to corroborate him, if the former statement is consistent with the evidence given by him in court. The rule is based on the assumption that consistency of utterance is a ground for belief in the witness's truthfulness, just as inconsistency is a ground for disbelieving him. As for myself, although the previous statement made under section 157 is admissible as corroboration, it constitutes a very weak type of corroborative evidence as it tends to defeat the object of the rule that a person cannot corroborate himself."[50]

It may be of interest to note that in *R* v. *Velayuthan,* one of the so-called cases supporting the use of section 157 to allow previous statements as "corroboration", the Court of Criminal Appeal did go

[48] *Fuan Ah Fock* v. *R* [1940] M.L.J. Rep. 199; *J.H.A. Trowell* v. *P.P.* [1946] M.L.J. 41; *Koh Eng Soon* v. *R* [1950 M.L.J. 52; *Balwant Singh* v. *P.P.* [*1960*] M.L.J. 264; *Mohamed Aliv. P.P.* [1962] M.L.J. 230; *Ah Meev. P.P.* [1967] 1 M.L.J. 221; *Karthivayani &Anor.* v. *Lee Leong Sin & Anor.* [1975] 1 M.L.J. 221; *Tan Cheng Kooi* v. *P.P.* [1972] 2 M.L.J. 115 (First Information Report not a substantive piece of evidence).

[49] [1946] M.L.J. 41,42.

[50] [1975] 1 M.L.J. 119, 120.

on to actually endorse the principles enunciated in *R* v. *Baskerville,* including the view that corroboration must be evidence that implicates the accused! Thus, one cannot safely rely on *Velayuthan* as authority for a previous statement being acceptable as "corroboration" in cases where corroboration is desirable as a matter of prudence or practice.

A valuable approach may be found in *Fuan Ah Fock @ Phoa Ah Hock* v. *R.* Here, Terrell, Ag. C.J., in the Singapore High Court, in respect of previous statements by a child witness often years of age in a trial for theft, ruled:

> "Under section 157 of the Evidence Ordinance such statements are treated as corroboration of a witness (see *Rex* v. *Koh Soon Poh)* but such corroborative evidence standing by itself is not usually regarded as sufficient corroboration of an accomplice within the meaning of section 115, illustration (b),[51] of the Evidence Ordinance. For the purpose of this appeal the evidence of Mun Chok Hai must be regarded as uncorroborated."[52]

E. Position in India and Sri Lanka

Apparently, a witness's own statement was admissible in India, as it was under section 157, even before the Evidence Act was enacted there in 1872.[53] However, the principle behind section 157 was that prior statements otherwise inadmissible by virtue of the hearsay rule, were let in to lend credibility to the witness, particularly to rebut any suggestion of recent fabrication.[54] The present rationale behind section 157 is that consistency is a ground for belief in the witness's verracity.[55] The Indian Law Commission, expressing a majority view, stated it was doubtful if the section could be used to prove the truth of a previous statement, such as to be capable of legally amounting to corroboration that would be required of an accomplice, as under illustration (b) to section 114.[56]

It may be seen that the above view is similar to that which is expressed in *Fuan Ah Fock's* case.[57] It is submitted that this view is correct, and that the implications of the cases *of Koh Soon Poh* and *Velayuthan,* that section 157 allows statements to be used as corroboration of the type required in *Baskerville,* are not at all warranted.

In Sri Lanka, statements proved under section 157[58] are not substantive evidence, and it has been held that previous statements by

[51] This corresponded with Singapore's present section 116, and Malaysia's present section 114.

Illustration (b) of the section then read (and in Malaysia presently reads) that "the court may presume… that an accomplice is unworthy of credit unless he is corroborated in material particulars."

Illustration (b) was amended in Singapore by act 11 of 1976 to tone down the wording in connection with the court's new discretion to warn itself if it considered it necessary; so that the court may presume "that an accomplice is unworthy of credit and his evidence needs to be treated with caution".

[52] [1940]M.L.J. Rep. 199.

[53] Law Commission of India, Sixty-Ninth Report on the Indian Evidence Act 1872 (1977), p.837.

[54] *Ibid.*

[55] *Ibid.,* p.840(para.88.21).

[56] *Ibid.,* p.845 (para.88.35A).

[57] [1940]M.L.J. Rep. 199.

[58] Evidence Ordinance, No. 14 of 1895, Ceylon (now Sri Lanka).

an accomplice do not constitute such independent testimony which is necessary for the corroboration of the testimony of accomplices.[59]

F. The Effect of the Amendments of 1976 to Evidence Act and Criminal Procedure Code

In 1976, substantial amendments were made to Singapore's Evidence Act and Criminal Procedure Code, to incorporate several recommendations of the Criminal Law Revision Committee's Eleventh Report on Evidence in the United Kingdom.

The Committee recommended a clause[60] to make complaints in criminal cases admissible as evidence of the facts complained of, and which would be so even as an exception to the hearsay rule — the maker thus need not be called as a witness, if the statutory conditions were fulfilled — to rebut a suggestion of recent fabrication.[61] This would have brought the position in criminal cases into line with the civil cases already covered in the Civil Evidence Act 1968, section 3(1) (b). The effect of this provision would have been that the circumstances in which the complaint had been made would have gone to the weight of the evidence only, and not affected its admissibility. This clause was not implemented in Singapore.

However, section 147 of the Singapore Evidence Act has been amended to admit only previous *inconsistent* statements as evidence of the facts stated, if they are used for the purpose of cross-examination under section 147.[62]

On the other hand, it is also specifically provided[63] that previous inconsistent statements used for cross-examination, despite being admissible as evidence of any facts stated therein, shall *not* be capable of corroborating evidence given by their maker.

Other amendments to the Evidence Act[64] and the Criminal Procedure Code[65] state whether evidence made admissible by them may or may not amount to "corroboration". As these amendments were based on the Eleventh Report recommendations, it must be understood that the Committee there clearly intended the term "corroboration" as used by them to have the meaning given to it in *Baskerville's* case. Thus the introduction of these amendments has correspondingly introduced the *Baskerville* meaning of "corroboration" in those clauses. Section 159 of the Singapore Evidence Act[66]

59 *Sivasambu* v. *Nugawela* (1940) 41 N.L.R. 363. Also, see generally, G.L. Peiris, *The Law of Evidence in Sri Lanka,* (2nd ed., 1977), pp. 542-550.

60 Clause 33, read with clause 31(a) of the Draft Bill appended to the Eleventh Report *(supra,* note 37).

61 Eleventh Report, *supra,* para. 232.

62 The equivalent provision in Malaysia is section 145, which of course was never so amended.

One result of the amendment to section 147 in Singapore is that the statement in the leading case on the use of previous statements for the purpose of cross-examination, *Muthusamy* v. *P.P.* [1948] M.L.J. 57, that such statements do not become admissible thereby as evidence of the facts stated therein, is to be qualified in Singapore.

63 Section 147(6).

64 Such as section 158(2).

65 Such as sections 123, 381(4).

66 Section 157 in the Malaysian Evidence Act. A Singapore draftsman obviously sought to "tidy" up the Act by re-numbering every section after section 34, thereby destroying the easy comparability of the Indian, Malaysian, Brunei and Singapore Evidence Acts based on their common structure. One might as well have re-arranged the columns in an edifice for its "aesthetic" enhancement.

remained untouched, and thus retains the *pre-Baskerville* meaning of "corroboration", with Stephen's own refinement (as he was wont to do). This has created a confusing state of affairs, with definitely *two* meanings of corroboration after the amendments of 1976.

Of course, it is possible that the two meanings had existed even before 1976. However, the 1976 amendments have made further amendment more urgent: It is submitted that the Evidence Act needs to amended to define "corroboration" in the Act, or at least clarify its meaning in the context of particular sections. Thus, for section 159, the term "to corroborate the testimony of" could be more happily replaced by the words "to show the consistency of", or "to support the credibility of" or "to establish the credit of". Any of these would clarify to what use the previous statement is to be put.

In any case, since, under the present wording of the section, it is the *testimony* of the witness that is to be corroborated, and not any particular *fact* in evidence, section 159 may in its context be taken to mean something other than corroboration in the *Baskerville* sense.

IV CONCLUSIONS

1. Despite the impression created in *Teo,* corroboration by previous statement within the context of section 159 of the Singapore Evidence Act should not be treated as equivalent to "independent" evidence but as evidence of consistency. There are good reasons for this. First, there is a long line of cases departing from the two 1935 cases of *Koh Soon Poh* and *Velayuthan.* Second, even if these cases are binding on the Singapore courts, being Straits Settlements Court of Criminal Appeal decisions, *Koh Soon Poh* is validly distinguishable in the manner enunciated in *J.H.A. Trowell* v. *P.P.;*[67] and *Velayuthan* did in fact support the *Baskerville* test, thereby requiring independent evidence in that case. A previous statement by a witness cannot by any stretch of the imagination be regarded as anything other than self-corroboration, and so, not such independent evidence as is required.

2. In *Teo Eng Chan's* case[68] the law appears to have come full circle to the 1935 position. However, *Teo does* not cite the earlier 1935 cases and so it is unclear if it intended to follow them. Further, Coomaraswamy, J., citing *Chiu NangHong* v. *P.P,* decided by the Privy Council on appeal from Malaysia (which is Singapore was a part of at the time), as a case where corroboration was said to be evidence independent of the witness's testimony, sought to distinguish *Chiu Nang Hong* on the basis that counsel for the Public Prosecutor there was precluded from argument on the significant differences between the law and practice in England and that in Malaysia, where the Act was almost identical to Singapore's, and as to what constituted corroboration.[69] He then said that our law is contained in section 159. However, what of the rest of the long line of cases that have required corroboration in the *Baskerville* sense?[70] These cannot easily be overlooked or dismissed.

3. There is need for reform of section 159 of the Singapore Evidence Act. It should be clarified that section 159 statements can only be

[67] [1946]M.L.J. 41.
[68] [1988] 1 M.L.J. 156.
[69] *Ibid.,* at p. 161.
[70] See the cases listed in notes 10, 11, 12, and 14, *supra*..

utilised as evidence to show consistency of the witness who is testifying and to add to his or her credibility; section 159 is not an admissibility section, or it would make previous statements substantive evidence or admissible as an exception to hearsay. The Legislature should perhaps also consider the Indian Law Commission's recommendations that the scope of the section be widened to include statements made before authorities legally competent to inquire into a fact or to record statements.[71]

4. In *Teo Eng Chan,* consent (as with fear of hurt) was clearly in issue. The complaint would certainly be evidence of consistency at least, of the complainant's testimony in English law, even if consent was not in issue. However, if a complaint is indeed "corroboration" so that self-corroboration may be corroboration in rape or other sexual offence cases, what was the complaint to the doctor in *Teo* corroborative of? It is not clear from the judgment in *Teo.* Was it corroborative of the complainant's veracity, of her whole testimony, or of her lack of consent? Should it have been corroborative of lack of consent, this sets a dangerous precendent for future rape cases, as it overlooks the danger of concoction in rape trials that was part of the rationale for the desirability for corroboration in the first place, and sets the stage for the possible manufacture of "corroborative" evidence by repetition. "What a man says as complaint to his surgeon, is evidence",[72] but only if it is a part of the *res gestae.*

5. On the actual facts of *Teo,* however, there was probably adequate corroboration in the *Baskerville* sense, even if the complaint to the doctor is discounted, against three of the accused. This independent corroboration is found in the admissions by one or more of three of the accused, in the presence of the others, of sexual intercourse in circumstances where the complainant put up a struggle, screamed and cried; and this was told to an independent witness at a hawker centre shortly after the event on the night of the rape. Informal admissions, whether verbal or by conduct, have always been regarded as independent evidence against their makers or persons "in privity" with them (such as their principals or co-accused). These would have been corroboration even of the sexual act had the accused denied it.

The four accused had all admitted to having had sexual intercourse with the complainant, only alleging that she consented. The cumulative effect of the acts, however, give rise to grave doubt that intercourse was had with the consent of the young woman in question. It was at a deserted quarry in a lonely place, and the woman had intercourse with four men (some of them strangers until recently or that evening itself) in rapid succession. Could a woman who had not even been suggested by any of the accused to be either a nymphomaniac or a prostitute have voluntarily participated in such a sexual marathon? It is clearly possible, but surely very unlikely.

As Coomaraswamy, J. stated, in saying he believed the complainant on the issue of consent:

> "The surrounding circumstances show that she is extremely unlikely to have consented. On Monday, September 2,.. she was able for half an hour to resist any further advances towards sexual

[71] Law Commission of India, Sixty-Ninth Report, *supra,* paragraphs 88.34-35.
[72] The words, frequently quoted, were used by Parke B. in *R* v. *Guttridges* (1840) 9 C. & P. 471, 472. See also *R* v. *Nicholas* (1846) 2 C. & K. 246., per Pollock, C.B.

> advances by a single man, Teo, with ho other males around. I find it impossible to believe that a girl who did this on Monday could, two days later, consent to four persons, the first of whom was Sim, a total stranger, having sex with her across three seats in the cabin of a lorry in a dark and deserted quarry. Any contrary view goes against the grain of logic and common sense."[73]

On the facts, then it would appear that the court could safely convict the accused, and any improper admission of evidence as corroborative or direction thereon is unlikely to have occasioned a failure of justice.[74]

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[73] [1988] 1 M.L.J. 156 at 160.

[74] For the purposes of section 396, Criminal Procedure Code, Cap. 68, 1985 (Rev. Ed.).

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