

## A PLEA FOR REFORM: LAW ON CORROBORATION

The Republic's Evidence Act<sup>1</sup> is in need of reform, and one provision of that law in particular need of reform is that dealing with corroboration. In this article, the writer will consider,

- (a) the law on corroboration in the Republic's Evidence Act (hereafter referred to as the Act),
- (b) the rationales behind the English practice of warning the tribunal against acting on uncorroborated evidence in certain specific cases,
- (c) the practice of the courts in Singapore. Finally the writer will marshal some facts to show that the need for reform has become urgent in the light of two recent English decisions<sup>2</sup> and the recommendations of the Criminal Law Revision Committee in England.<sup>3</sup>

The relevant provisions of the Act are sections 134, 133, illustration (b) to section 114 and section 157.<sup>4</sup> A literal reading of section 134 leads one to conclude that for proof of any fact there is no need for corroborative evidence in the absence of an express provision. Further, section 133 provides that a conviction based on the uncorroborated evidence of an accomplice is not illegal although the court is entitled to presume under section 114, illustration (b), that an accomplice is unworthy of credit 'unless his evidence is corroborated in material particulars'. Section 157 relates to previous consistent statements of a witness and technically does not relate to the law on corroboration. This was expressly recognised in the case of *Ah Mee v. Public Prosecutor*.<sup>5</sup>

1. Cap. 5, Revised Laws of Singapore 1970.
2. *Director of Public Prosecutions v. Hester* [1972] 3 All E.R. 1056, and *Director of Public Prosecutions v. Kilbourne* [1973] 1 All E.R. 440.
3. 11th Report on Evidence (General) 1972, Cmnd. 4991.
4. "Section 134: No particular number of witnesses shall in any case be required for the proof of any fact.  
 section 133: An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.  
 section 114: illustration (b): The court may presume... that an accomplice is unworthy of credit unless he is corroborated in material particulars;  
 section 157: 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."
5. [1967] 1 M.L.J. 221.

The effect of the above-cited provisions of the Act would be to dispense with corroborative evidence in all cases (unless expressly provided for otherwise), although by presuming an accomplice to be unworthy of credit, the court may require his evidence to be corroborated. Despite the above provisions, the courts in Singapore have tended to follow the practice of the courts in England.

The practice of the courts in England has been

- (a) to insist on corroborative evidence where there is a requirement of law<sup>6</sup> that a witness must be corroborated before a fact may be considered as proved, and
- (b) to insist on a rule of practice, which has "the force of a rule of law"<sup>7</sup> that the judge must warn the jury, or where there is no jury, the tribunal must warn itself of the danger of acting on uncorroborated evidence, failing which a conviction will be quashed.

The warning must be given in respect of

- (i) an accomplice's evidence,
- (ii) a complainant's evidence in a sexual case,
- (iii) a child's sworn testimony,
- (iv) a claimant's evidence in respect of an estate of a deceased person, and
- (v) evidence in matrimonial causes.

It is important to note that the warning relates to the danger of acting on the uncorroborated evidence, but this does not prevent the tribunal from acting on the uncorroborated evidence if it believes the evidence after the warning has been given.

The justification for this practice is that in the case of an accomplice<sup>8</sup> giving evidence there is the danger that "he may seek the avoidance or reduction of his punishment as a reward ... for enabling the crime to be brought home against the other criminals; and he may be tempted to curry favour with the prosecution by painting their guilt more blackly than it deserves".<sup>9</sup> Heydon<sup>10</sup> points out further that an accomplice may wish to suggest his innocence or minor participation thereby transferring the blame to others, and that an accomplice being a friend of those who committed the crime with him would rather fix the crime on an innocent person.

6. By way of illustrations see section 4(2) Road Traffic Act, 1960; section 13, Perjury Act, 1911; section 38, Children and Young Persons Act, 1933.
7. *Davies v. Director of Public Prosecutions* [1954] A.C. 378 at 399, per Lord Simonds, L.C.
8. See Cross, R. *Evidence* (3rd ed., 1967) p. 169; Williams, G., "Corroboration — Accomplices" (1962) Criminal L.R. 588; Heydon, J.D. 'The Corroboration of Accomplices', (1973) Criminal Law Review, p. 264.
9. Heydon, (1973) Criminal Law Review, p. 254 at 265.
10. Id.

In sexual cases<sup>11</sup> the warning is required on the rationale that allegations of sexual offences are easy to make and difficult to disprove because such offences usually occur in private. There is the further danger that the complainant may be hysterical and confused which adds to the danger of her making a wrong identification.

In the case of children<sup>12</sup> giving sworn evidence the justification for the warning is that children "may be more susceptible to the influence of third persons, and may allow their imaginations to run away with them".<sup>13</sup>

On considering the above rationales, and remembering first, that despite the fact that the Act is a codifying statute, it is not exhaustive of the rules of evidence, second, that by virtue of the First<sup>14</sup> and Second<sup>15</sup> charters of Justice, the English Common law constitutes the basic framework of our legal system, third, that our Act which was first drafted by Stephen was modelled on English law, fourth that section 2(2) of the Act retains the common law not inconsistent with the provisions of the Act at the time the Act was introduced into Singapore, as part of the laws of Singapore, and fifth, that the Judicial Committee of the Privy Council (which Board is constituted by the Law Lords from the House of Lords) hears appeals from our appellate courts, it is no surprise therefore to note that wherever possible English practice and standards have been adopted.

That the English practice of requiring that the tribunal warns itself or the jury, on acting on uncorroborated evidence has been adopted in Singapore is illustrated by *Bhuboni Sahu v. The King*,<sup>16</sup> a decision of the Judicial Committee binding on our courts,<sup>17</sup> *Ramachandran v. Public Prosecutor*,<sup>18</sup> *Ling Ngan Liang v. Public Prosecutor*,<sup>19</sup> *Ah Mee v. Public Prosecutor*,<sup>20</sup> *Goh Liang Lam v. Public Prosecutor*,<sup>21</sup> and *Ravanickam v. Public Prosecutor*.<sup>22</sup>

11. Williams, "Corroboration — Sexual Cases" (1962) Criminal L.R. 662.
12. Andrews, J.A. "The Evidence of Children" (1964) Criminal L.R. 769.
13. Cross, *Evidence* (3rd ed.; 1967) 175.
14. Introduced in 1807.
15. Introduced in 1826.
16. [1949] A.I.R. (P.C.) 257.
17. See the reasoning of the Federal Court in *Khalid Panjang v. Public Prosecutor* (1964) 30 M.L.J. 108. The point in issue involved the construction to be put to section 10 of the Evidence Act. The Trial Judge had refused to apply the construction of the Privy Council on a corresponding section of the Indian Evidence Act (in *pari materia* to section 10) on the ground *inter alia* that the Privy Council case of *Mirza Akbar* was wrongly decided. The Federal Court in reversing the decision of the trial court, held itself bound by the decision of the Privy Council.
18. [1972] 2 M.L.J. 183.
19. [1965] 1 M.L.J. 40.
20. [1967] 1 M.L.J. 221.
21. (1958) 25 M.L.J. 255.
22. [1966] 1 M.L.J. 60.

In recent times there have been several criticisms against this practice of requiring a warning. Heydon<sup>23</sup> points out that the problems pertaining to the question of what is corroboration, the effect of its absence, the question of who is an accomplice, all serve to make corroboration warning a complicated affair difficult for a jury to understand and a fertile source of appeal. He adds that a corroboration requirement automatically makes it harder to obtain convictions for certain crimes; that the law is inconsistent in not demanding corroboration for evidence which may be weaker than accomplice evidence, for example, evidence of identification. He further feels that the English Criminal Law Revision Committee in recommending the abolition of the rule requiring warning of the danger of convicting an uncorroborated testimony of an accomplice, did so for two reasons, namely that the precise definition of an accomplice is doubtful and unsatisfactory and two, that accomplice evidence is not always dangerous and it is wrong to have a general rule operating more extensively than the mischief it is trying to cure.

The Criminal Law Revision Committee<sup>24</sup> by way of general comment on this aspect of the law of corroboration felt that the rules have the great disadvantage of being difficult to apply owing to technical distinctions, that further it was ridiculous to warn of the danger of convicting on uncorroborated evidence and yet allowing for the conviction. The Committee also felt that there is no need to consider whether the witness is or is not an accomplice; the relevant question would be to inquire into his motives in giving evidence.

It is strongly recommended that any reform measure in respect of the law on corroboration should take into account these criticisms, bearing in mind also the absence of jury trials<sup>25</sup> in Singapore today. Legislative reforms are needed, particularly to displace binding Privy Council and appellate court decisions.

The recent cases of the *House of Lords in Director of Public Prosecutions v. Hester*<sup>26</sup> and *Director of Public Prosecutions v. Kilbourne*,<sup>27</sup> raise a variety of interesting points on the subject and more specifically bear upon a comment of the Criminal Law Revision Committee, that "a witness whose evidence requires corroboration or in whose case corroboration has to be looked for under the common law rules cannot be corroborated by a similar witness. Thus one accomplice cannot corroborate another. An unsworn child cannot corroborate another unsworn child; but the authorities are confused as to whether an unsworn child can corroborate a sworn child or a sworn child an unsworn child".<sup>28</sup> Further in the light of certain comments made by Lord

23. (1973) Criminal L.R. 264.

24. 11th Report on Evidence (General 1972, Cmnd. 4991, paras. 179-181.

25. Jury Trials were abolished by Act No. 17 of 1969.

26. [1972] 3 All E.R. 1056.

27. [1973] 1 All E.R. 440.

28. 11th Report on Evidence (General) 1972, Cmnd. 4991, para. 177.

Morris<sup>29</sup> on the concept of corroboration, and by Lords Diplock<sup>30</sup> and Simon<sup>31</sup> as to how a jury should be directed it will be submitted that the recommendations of the Criminal Law Revision Committee are but a logical step from the decisions in *Director of Public Prosecutor v. Hester*, and *Director of Public Prosecutor v. Kilbourne*. It is strongly urged, therefore, that the recommendations of the Criminal Law Revision Committee should serve as a useful model for the reform of the law on corroboration in Singapore.

In *Director of Public Prosecutions v. Hester*<sup>32</sup> the respondent was charged with indecently assaulting a young girl on three separate occasions. At the trial the girl gave sworn evidence relating to the incidents in question. Her evidence on the third count was substantiated by that of her sister who was in the room when the incident took place. However, her sister gave evidence not on oath. The issue was whether her sister's evidence could corroborate her evidence when under section 38 of the Children and Young Persons Act, 1933, her own evidence required corroboration. This in turn gave rise to the question whether the complainant's evidence could corroborate her sister's. This meant among other things a reconsideration of the decision of the Court of Appeal in *R. v. Manser*.<sup>33</sup> The argument of the respondent on this point was that because of the rejection of the mutual corroboration concept in *R. v. Manser*, the complainant's evidence could not corroborate her sister's. A further justification of the rule in *R. v. Manser* was to be found (it was argued) in the rule that evidence of an accomplice cannot be corroborated by evidence of a fellow accomplice.

The House of Lords in its decision held that *R. v. Manser* was wrongly decided. The rejection of the mutual corroboration concept had been based upon a misconception of the nature of corroboration. In the view of Lord Morris,<sup>34</sup> "one of the elements supplied by corroborative evidence is that there are two witnesses rather than one. The weight of the evidence is a matter for the jury. The essence of corroborative evidence is that one creditworthy witness confirms what another creditworthy witness has said. To rule it out on the basis that there is some mutuality between that which confirms and that which is con-

29. [1972] 3 All E.R. 1056 at 1065, His Lordship said: "One of the elements supplied by corroborative evidence is that there are two witnesses rather than one. The weight of the evidence is for the jury .... The essence of corroborative evidence is that one creditworthy witness confirms what another creditworthy witness has said. Any risk of the conviction of an innocent person is lessened if conviction is based on the testimony of more than one acceptable witness. Corroborative evidence in the sense of some other material evidence in support implicating the accused furnished a safeguard which makes a conclusion more sure than it would be without such evidence. But to rule it out on the basis that there is some mutuality between that which confirms and that which is confirmed would be to rule it out because of its essential nature and indeed because of its virtue."
30. [1972] 3 All E.R. 1056 at 1075-1076.
31. [1973] 1 All E.R. 440 at 463.
32. [1972] 3 All E.R. 1056.
33. (1934) 25 Cr. App. Rep. 18.
34. [1972] 3 All E.R. 1056 at 1065.

firmed would be to rule it out because of its essential nature and indeed because of its virtue". The broad result of this decision is succinctly summed up in the words of Lord Diplock:<sup>35</sup> "There is no rule of general application that evidence of a witness which is itself suspect for a reason which calls for a warning of the danger of convicting on it unless it is corroborated is incapable in law of amounting to corroboration of the evidence of another witness whose evidence is also suspect for the same or any other reason which calls for a similar warning".

In *Director of Public Prosecutions v. Kilbourne*,<sup>36</sup> the accused was convicted of the offences of buggery, attempted buggery and indecent assault. The counts fell into two groups, and in his summing up the trial judge directed the jury *inter alia*, that whereas boys in each of the two groups knew each other well and could have collaborated in putting forward their stories, it was unlikely if not impossible for the two groups to have collaborated in this way, and accordingly they were entitled to take the evidence of boys in one group as corroborating the evidence of the boys in the other group.

On appeal against conviction, the Court of Appeal<sup>37</sup> allowed the appeal on the reasoning that in respect of corroboration a child giving evidence of an indecent act committed against itself is in the same position as an accomplice, and since evidence of one accomplice cannot corroborate that of another, the evidence of the children cannot be mutually corroborative. The Court of Appeal then held that because the trial judge's direction might have led the jury to believe that evidence of one group of children giving evidence about a different series of offences could corroborate evidence of the other group, the convictions would be quashed. On appeal, the House of Lords, reversing the decision of the Court of Appeal, held, that there was no general rule to the effect that witnesses of a class requiring corroboration could not corroborate one another. More specifically on the issue whether the sworn evidence of a child victim as to an offence charged can be corroborated by the admissible evidence of another child as to similar conduct on a different occasion, the House answered in the affirmative, rejecting along the way the distinction sought to be derived from *R. v. Sims*<sup>38</sup> "between evidence which tends to corroborate and supporting or similar fact evidence" noting that this distinction arose from the decision of the Court of Appeal in *R. v. Manser*,<sup>39</sup> and with its overruling in *Director of Public Prosecutions v. Hester*,<sup>40</sup> the basis for the distinction disappears. Further the House noted that the rule relating to accomplice evidence, was not a general rule that could be translated to the instances of other "suspect evidence", and additionally in relation to accomplice evidence itself, it was not of general application, thus

35. *Id.* at p. 1074.

36. [1973] 1 All E.R. 440.

37. [1972] 3 All E.R. 545.

38. [1946] 1 All E.R. 697.

39. (1934) 25 Cr. App. Rep. 18.

40. [1972] 3 All E.R. 1056.

enlarging on the observations of Lord Diplock<sup>41</sup> in *Director of Public Prosecutions v. Hester*. In this connection, it is informative to note that Lord Chancellor's words: "where the so-called accomplices are of the third class listed by Lord Simonds L.C. in *Davies v. Director of Public Prosecutions*, the danger is or may be nugatory. The real need is to warn the jury of the danger of a conspiracy to commit perjury in these cases, and, where there is the possibility of this, it is right to direct them not to treat as corroborative of one witness the evidence of another witness who may be part of the same conspiracy, but who cannot be an accomplice because if the evidence is untrue there has been no crime committed. This prompts me to point out that although the warning must be given in every appropriate case, the dangers to be guarded against may be quite different".<sup>42</sup>

In the view of the House, such form of evidence being relevant circumstantial evidence, is available as corroborative evidence. The issue then becomes, whether it will be treated as such, and this in turn will depend on what weight the jury attaches to it and the inferences which it draws as to whether the offences demonstrate an underlying unity.

The combined effects of the decisions in *Director of Public Prosecutions v. Hester*<sup>43</sup> and *Director of Public Prosecutions v. Kilbourne*<sup>44</sup> appear to be:

- (a) that there is no rule of general application that evidence of a witness which is itself suspect for a reason which calls for warning of the danger of convicting on it unless it is corroborated is incapable in law of amounting to corroboration of evidence of another witness whose evidence is also suspect for the same or any other reason calls for a similar warning,
- (b) more specifically, in the context of the testimony of children, it means that evidence of an unsworn child can corroborate and be corroborated by evidence of a child giving evidence on oath,
- (c) the court was prevented from accepting the logical conclusion that the unsworn evidence of a child could be corroborated by the unsworn evidence of another child by virtue of section 38 of the Children and Young Person's Act, 1933. Lord Pearson in *Director of Public Prosecutions v. Hester*<sup>45</sup> summed up the views of the House most succinctly when he said, "the evidence of unsworn child cannot be taken to be corroboration of another child. That is the statutory disqualification and it is the only one". This conclusion of the House was reached by construing the words "other material evidence" in section 38 to mean evi-

41. *Id.* at p. 1074.

42. [1973] 1 All E.R. 440 at 454.

43. [1972] 3 All E.R. 1056.

44. [1973] 1 All E.R. 440.

45. [1972] 3 All E.R. 1056 at 1069.

dence other than that admitted by virtue of the section. It would be fair to say that had it not been for the statutory prohibition, the House would have extended its conclusion to its logical limits,

- (d) however, from the judgments, it is apparent that a rejection of the rule against mutual corroboration in *R. v. Manser* did not necessarily allow for a relaxation of the rule that one accomplice could not corroborate another. The House in both cases were agreed that different considerations apply in the case of accomplice evidence,
- (e) in the judgements of Lord Hailsham L.C. and Lord Simon in *Director of Public Prosecutions v. Kilbourne*,<sup>46</sup> and Lord Diplock in *Director of Public Prosecutions v. Hester*<sup>47</sup> we have a clarification of the rule that an accomplice could not corroborate another accomplice. The House in both cases rejected the view that there is a general rule that no persons who come within the definition of accomplice may be mutually corroborative. In particular the court held that it does not apply necessarily to an accomplice described in Lord Simonds L.C.'s third category in *Davies v. Director of Public Prosecution*,<sup>48</sup> namely the parties to other crimes alleged to have been committed by the accused when evidence of such crimes is received on the ground that it tends to prove something more than mere criminal propensity,
- (f) The decision in *Director of Public Prosecutions v. Kilbourne*,<sup>49</sup> clarifies the connection between similar fact evidence and corroboration. In the view of the House, such form of evidence where relevant and admissible tends to corroborate the offence charged, and whether or not such evidence will have this effect will depend on what weight is accorded to such evidence by the jury and what inferences it draws as to whether the offences demonstrate an underlying unity.
- (g) The House also noted that in view of that state of the law, the trial Judge has a difficult task of directing the jury and in fact Lord Diplock<sup>50</sup> went out of his way to suggest a few guidelines. A simplification of the law relating to corroboration and of the direction to the jury is therefore called for, and in this respect the recommendations of the Criminal Law Revision Committee should be most welcomed.

In Singapore, the need for reform becomes urgent. Our courts are bound by the decisions of the Privy Council and our appellate courts. These principles have since been doubted in the English cases of *Director*

46. [1973] 1 All E.R. 440 at 542-455 and 462-463 respectively.

47. [1972] 3 All E.R. 1056 at 1073-1074.

48. [1954] 1 All E.R. 507.

49. [1973] 1 All E.R. 440.

50. [1972] 3 All E.R. 1056 at 1075-1076.



of *Public Prosecutions v. Hester*<sup>51</sup> and *Director of Public Prosecutions v. Kilbourne*.<sup>52</sup> Certainly, a review appears necessary.

The Scheme proposed by the Criminal Law Revision Committee<sup>53</sup> (which it is hoped will serve as a useful model for the law reformers in Singapore) very broadly is,

- (a) a recognition of a general rule of mutual corroboration subject to certain exceptions,
- (b) the exceptions are laid out in clause 17 and section 18, Clause 17 requires the court to warn the jury (and in Singapore if Clause 17 is adopted, then the court, in the absence of a jury, warns itself) of a special need for caution before convicting the accused on the evidence of a complainant in a sexual offence. Clause 17(2) makes it mandatory that where the complainant is a child, that the evidence be corroborated in some material particular implicating the accused,
- (c) outside of the excepted cases it shall be for the court to decide in its discretion having regard to the evidence given, whether the jury should be given a warning about convicting the accused on uncorroborated evidence. This is expressly provided for in Clause 20, (which could be adapted to suit the situation in Singapore),

51. [1972] 3 All E.R. 1056.

52. [1973] 1 All E.R. 440.

53. 11th Report on Evidence (General) 1972, Cmnd. 4991, Draft Bill clauses 17-21.

“Clause 17(1)

Where at the trial on indictment of a person charged with a sexual offence evidence is given by the person in respect of whom the offence is alleged to have been committed, then, unless subsection (2) below applies, the court shall warn the jury that, if they find that the evidence of that person is not corroborated in some material particular by evidence implicating the accused, there shall be a special need for caution before convicting the accused on the evidence of that person only.

Clause 17(2)

Where, in the case of proceedings for a sexual offence, the person in respect of whom the offence is alleged to have been committed was at the material time a child, the accused shall not be convicted of the offence on the evidence of that person only, unless that evidence is corroborated in some material particular by evidence implicating the accused.

Clause 18.

“Clause 19(1)

Any rule of law or practice whereby in criminal proceedings the evidence of one witness is incapable of corroborating the evidence of another witness is hereby abrogated.

Clause 20(1)

Subject to the provisions of section 17 of this Act and any other enactment relating to the corroboration of evidence in criminal proceedings, at a trial on indictment it shall be for the court to decide in its discretion, having regard to the evidence given, whether the jury should be given a warning about convicting the accused on uncorroborated evidence; and, accordingly, any rule of law or practice whereby at such a trial it is in certain circumstances obligatory for the court to give the jury such a warning is hereby abrogated.”

- (d) the combined effect of Clauses 17, 19 and 20 would be to extend the decisions of the House of Lords in *Director of Public Prosecutions v. Hester*<sup>54</sup> and *Director of Public Prosecutions v. Kilbourne*<sup>55</sup> to their logical limits, namely, first, that unsworn testimony of a child can corroborate testimony not on oath of another child, second, an accomplice can now corroborate another accomplice's testimony; and third, it is now in the judge's discretion to decide whether or not the jury should be given a warning about convicting the accused on uncorroborated evidence.

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54. [1972] 3 All E.R. 1056.

55. [1973] 1 All E.R. 440.

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