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**TITLE:**

**CORROBORATION WITH REFERENCE TO  
EVIDENCE OF AN ACCOMPLICE AGENT  
PROVOCATEUR, ENTRAPPED WITNESS  
INTERESTED WITNESS AND OF A CO-  
ACCUSED**

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## PREFACE

The opening chapture discusses the concept of corroboration and how corroboration evidence confirms and support the evidence in the sense that it renders other evidence more probable.

In the second chapter, the discussion will be on how corroboration maybe regarded as a Matter of Law or look for as a Matter of Practise.

The third chapter, will emphasize on discussion pertaining to corroboration as of accomplice testimony, evidence of an agent provocateur and entraped witnesses, evidence of interested witness and evidence of a co-accused.

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The term 'corroboration' is not defined in the Evidence Act.

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.

Formulating the kind of evidence which may be regarded as corroboration has been recognised as a futile exercise and indeed dangerous, for that would tend to restrict the very nature of corroboration evidence. In *Rex v Baskerville* a case of five judges held:-

"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 the crime has been committed, but also that the prisoner committed"

it...corroboration evidence is evidence which 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".

Lord Rading said:

"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 the crime has been committed, but also that the prisoner committed it... The nature of the corroboration will necessarily vary according to

the particular circumstances of the offence charged. It would

be in high degree dangerous to attempt to formulate the kind

of evidence which would be regarded as corroboration, except

to say that corroboration evidence is evidence which 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". .the jury should have been told that corroboration

must consist of independent evidence showing in the first

place that the crime was committed and in the second place

that the appellants were connected with it in the way alleged

against them by the prosecution.[2]

The essence of the corroboration evidence is that it

'confirms' 'supports' or strengthens' other evidence in the

sense that it renders [that] other evidence more probable.[3]

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 tend 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 it was committed by the

accused."[4]

Independent evidence may be found in a plurality of witnesses of fact, it may come from another witness who can testify to a fact in issue, he has observed or to relevant fact tend, circumstantially to prove a fact in issue. It is settled that corroboration may be in the form of circumstantial evidence.[5] In every case, it must tend to connect the accused with the crime.

The principle in Baskervilles case was first accepted in a leading of R v Lim Yap Fong[6] in the Straits Settlement Courts of Appeal in 1919. Here, where the accused was convicted of retaining stolen property (rubber) the court



quashed that conviction holding that the rubber had not been identified as stolen and that there was no independent corroboration, of an accomplice evidence of the kind required.

In the case of Mat bin Awang Kechik & Ors v P.P[7] Thomson C.J (as he then was) observed.

"Now, what is the corroborative evidence of the description dealt with in R v Baskerville?" I means corroboration under the common law in some material particulars tending to show that the accused committed the crime charged. It is not sufficient that the corroboration shows the witness to have told the truth in the matters unconnected with the guilty of

the accused."

And according to Ong F.J (as he the was) in the case of Ah Mee

v P.P.[8]

"Corroboration in the legal sense connotes some independent evidence of some material fact which implicates the accused person and tends to confirm that he is guilty of the offence."

The corroboration need not consist of direct evidence that the defendant committed the offence, nor need it amount to confirmation of the whole amount given by the witness, provided that it corroborates the evidence in some respects material to the charge under consideration. It is sufficient

if it is circumstantial evidence of the defendants connection with the offence but it must be independent evidence and must not be vague[9] corroborative evidence is not necessarily restricted to the oral evidence of an independent witness.

Corroboration can equally well be afforded by established facts and the logic of established facts sometimes speaks even more eloquently than words.[10]

Therefore the purpose of corroboration is merely confirm and support testimony which as evidence is sufficient, satisfactory and indeed credible; its purpose is not to give credence of legitimacy to evidence which is not only

deficient and suspect but also incredible for all purpose and intent.[11] In *Dowsw v A.G Federation of Malaya*[12] Privy Council held that for evidence to be corroborative it must be truly probative of the relevant issue that is, it must positively implicate the accused person and positively show or tend to show the truth of the accomplices story that the accused committed the offence. Corroboration, unless required by statute, goes only to the weight and value of the evidence.[13]

(2) CORROBORATION:- AS A MATTER OF LAW AND PRACTICE

Corroboration may be required as a matter of law or looked for as a matter of practice.

2.1 Corroboration as matter of Law:-

There are certain kinds of evidence which must be corroborated before any conviction of judgment may be based upon them.

Such requirement are usually provided for by statute and mandatory.[14] Thus, where corroboration is required as a matter of law, any conviction or finding of fact in its absence will be set aside by an appellant court.

2.2 Corroboration as a matter of Practice:-

It is a recognised principle of the common law that it is

undesirable for a tribunal of fact to act on certain kinds of

uncorroborated evidence without warning itself of the danger

inherent in so doing. thus the mandatory rule here is the

need for an appropriate warning and in the absence of such

warning a good ground of appeal will be founded. This

requirement of a warning has in effect natured into a rule of

law and mandatory.[15]

2.3 Corroboration and Requirement as to the Warning:-

It is opened to a Judge to discuss with the Jury the nature of the danger to be apprehended in convicting without

corroboration and the degree of such danger and it is well

established that a conviction after an appropriate warning may

stand notwithstanding that the evidence is uncorroborated

unless of course the verdict is otherwise unsatisfactory. [16]

In the case of Director of Public Prosecutor v Hester [17]

where the House of Lords held that it is wrong for a judge to

confuse the jury with a general if learned disquisition on the

law. His summing up should be tailor made to suit the

circumstances of the particular case. The word

'corroboration' is not a technical term of art, but a

dictionary word bearing its ordinary meaning since it is

slightly unusual in common speech, the actual word need to be

used and in fact it may be better to use it. Whether it is

used it need to be explained?

In another case of Rex v Neanano[18] it was stated that:-

"the cautions court or jury will often properly acquit in the

absence of the other evidence connecting the accuse and with

the crime, but no rule of law of practice requires it to do



so. What is required is that the trier of fact should warn himself, or if the trier is a jury, that it should be warned, of the special danger of convicting of the evidence of an accomplice, for an accomplice is not merely a witness with a possible motive to tell lies about an innocent accused but is such witness peculiarly equipped by reason of his inside knowledge of the crime, to convince the unwary that lies are the truth. This special danger is not met by corroboration of the accomplice in the material respects not implicating the accused, or by proof aliunde that the crime charged was committed by someone..."

Thus there is no particular form of word is necessary for this purpose, what is necessary is that the judges mind upon the matter should be clearly revealed. The reason why corroboration is required in some type of cases and the nature of corroboration was discussed in the case of Director of Public Prosecutor v Hester.[19] It is so required because experience has shown that there is a real risk that an innocent person may be convicted unless certain evidence against an accused (neatly called 'suspected evidence') is confirmed by other evidence. Corroboration is therefore nothing other than evidence which confirms or strengthen other evidence. It is in short evidence which

renders other evidence more probable. If so there is no essential difference between on the one hand, corroboration and on the other supporting evidence of evidence which helps to determine the truth of the matter. Each evidence which makes other evidence more probable.

3.0. Circumstances which requires corroboration as a matter of law or practice.

In Malaysia the need for corroboration in certain circumstances are entrenched in the Evidence Act 1950 and it proceeds there from with the adoption of common law principles that a tribunal acting on the uncorroborated evidence of a witness must warn itself of the danger of so doing. I shall

confine my discussion on corroborative evidence of an  
Accomplice, Agent Provocateur, Entrapped witness, interested  
witnesses and evidence of a co-accused.

### 3.1 Corroboration of an Accomplice Testimony

It is impossible to lay down a hard and fast rule as to what  
circumstances will render it necessary to class a witness as  
an accomplice. Each case must depend to a large extent, upon  
its own facts.

The question "who is an accomplice" has been fully dealt with  
by the House of Lords in *Davies v Director of Public  
Prosecutions*. [20]

1. On any view, persons who are participles criminis in respect of the actual crime charged, whether as principals or accessories before or after the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours). This is the natural and primary meaning of the term "accomplice". But in two cases, persons falling strictly outside the ambit of this category have, in particular decisions, been held to be accomplices for the purposes of the rule, viz: court has held that in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other parties should not be left to the jury without a warning that it is dangerous to accept it without corroboration.

In *Goh Khiok Phiong v Reg*[21] it was held that in deciding whether a witness should be treated as an accomplice, the trial judge should ask himself this question:-

"Is there any evidence upon which I can properly rule that the witness was a participant in the offence."

In every cases where the issue is raised that a witness is an accomplice the court must study the evidence and make necessarily finding. There can be no rule of law of evidence that a witness is automatically an accomplice just because of his actus reus. To be accomplice the witness who received the bribe must be the one who was abetting the offence of giving committed by the accused, the giver. Only than would the receiver be regarded as *particeps criminis*. This mean's that just as the giver as a principle offender requires mens rea so

does an accomplice witness who received the gratification. If he receive the gratification innocently or without any corrupt motive or if he did not receive it at all, although it was given to him, as far as he is concerned the gift did not change its characted to become an illegal gratification just because the giver (the accused) gave it with corrupt motive or with ill intention.[22]

In Abdul Rahman v P.P[23] Murray Aynsley J (as he then was) expressed the view that those Indian cases which appear to narrow the meaning of the term accomplice to a person who is guilty of the same offence as the accused are wrong.

His lordship said:-

" Certain Indian cases appear to narrow the meaning of the term "accomplice" to a person who is guilty of the same offence as the accused. I think that this is wrong; I think

that the principle on which the rule relating to accomplices is based would make the evidence of an accessory as much subject to suspicion as that of a principal".[24]

An accomplice is a person who has concurred or participated in the commission of an offence.[25] Section 133 of the Evidence Act 1950 provides:-

"An accomplice shall be competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice".

The above section makes admissible the uncorroborated testimony of an accomplice and a conviction based thereon is not illegal. However, in order not to misunderstand the nature and purpose of section 133 we must consider section 114 illustration (b) of the Evidence Act 1950, which lays down the presumption: