**CRITICAL ANALYSIS OF CORROBORATION UNDER THE NIGERIAN LAW OF EVIDENCE**

**ABSTRACT**

There is no legal requirement that the prosecution or the plaintiff present a million witnesses or pieces of evidence in order to win their case. Just one witness can result in a conviction in court. There are few exceptions, but generally speaking, a single piece of credible, persuasive evidence is sufficient to find a defendant guilty in a court of law. The situations that this knowledgeable person is referring to are those in which a judge will need to obtain confirmation before making a decision. A court may find an accomplice guilty based only on uncorroborated evidence, but he must exercise caution before doing so. In fact, the judge is recommended to look for supporting evidence before finding an accused person guilty because failing to do so may result in his judgement being overturned on appeal. Corroboration typically carves out a niche for itself and is applied in both criminal and civil proceedings. Additionally, it will list court rulings on numerous matters pertaining to corroboration as well as the opinions of the judges on the matter. In the legal system, corroboration is both popular and contentious. This is mostly because judges interpret the criminal and penal laws, as well as the Evidence Act, when it comes to the corroboration of evidence. The main goal of this paper is to critically assess the acceptability of corroboration under Nigerian evidence law, which is a requirement in some criminal and civil trials. Therefore, using primarily primary and secondary sources of Nigerian law of evidence, this work will clarify what corroboration means in Nigeria and Canada in general, as well as the role that judges play in deciding civil and criminal cases and various statutory provisions pertaining to corroboration of evidence in Nigeria.

TABLE OF CASES

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* *Anthony Enahoro v R (1965) NWLR 265 @ 280*
* *Alli v Alli [1965]3 All ER 48*
* *Brighty v Pearson (1938)4 All ER 127*
* *Bakobah v Yauri N.A Police (1970) 107 NNLR*
* *Davis v DPP [1954] AC 378*
* *Emmanuel Ugwumba v State [1993] 5 NWLR 660*
* *Hamid Musa & or v Yahaya Kefas Yerima & Anor [1997]7 NWLR 27.SC*
* *Johnson Erelau v I.R (1959)WRNLR 77 (Fsc)*
* *Mauka Ogbodu v State [1936]5 NWLR C.A*
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* *R v Spencer (HL) (1987) AC 128, (1973)2 WLR 24*
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* *R v Whitehead [1929]1 K.B 99 @ 102*
* *R v O”connor [1980] Crim L.R 43 C.A*
* *R v Turnbull [1977] QB 224 [1976]3 All ER 549 C.A*

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* Sexual Offence Act 1956
* Road Traffic Regulation Act 1984
* Road Traffic Act 1984
* Perjury Act 1911
* Divorce Reform Act 1969
* Civil Evidence Act 1963
* Criminal Justice Act 1988

## NIGERIA

 The Evidence Act 1945, Cap 112 LFN

### LIST OF ABBREVIATIONS

* WNLR: Western Nigeria Law Report
* WRNLR: Western Regional Nigeria Law Report
* NWLR: Nigeria Weekly Law Report
* NLR: Nigeria Law Report
* NNLR: Northern Nigeria Law Report
* A.C : Appeal Cases
* WLR: Western Law Report
* ALL ER : All England Report
* Q.B: Queen’s Bench
* K.B : King’s Bench

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**CHAPTER 1**

## GENERAL INTRODUCTION

### 1.0.0: INTRODUCTION

Corroboration is evidence tending to confirm some fact of which other evidence is given. As a matter of common sense, the more corroboration is present the easier it is to prove a fact and from this point of view a judge will always look for corroborating evidence.

Corroboration according to Osborn’s Concise Dictionary1 means independent evidence which implicate a person accused of a crime by connecting him with it, or an evidence which confirms in some fact particularly not only that the crime has been committed but also that the accused actually committed the crime. According to Oxford Dictionary2 corroboration mean evidence given to further support or strength existing evidence.

Corroboration according to the Evidence Ac3t refers to an independent statement made by other witness which proves the truth of the first evidence. It is also refer to as the requirement in some jurisdiction such as Scotland that any evidence adduced be backed up by at least one other source.

1. 8th edition by leslie Rutherford
2. 2nd edition vol.11 1963 by Horny Oxford University Sheila bone
3. Evidence act 1945 cap 112 L.F.N 1990

Corroboration is a mandatory requirement under certain circumstances, in the sense that no matter how convincing the evidence requiring corroboration is, the party relying on that evidence will fail unless he adduces corroboration.

Corroboration is therefore called for where there is need order to ascertain that such evidence can be relied upon to convict the accused person. Corroboration is a ground for the admissibility of certain evidence for the purpose of conviction and if the corroborating evidence is not the same with the existing evidence an accused can not be convicted upon such existing evidence. This essay shall examine the various incidence where corroboration must or might be required to be taken before there can be a conviction, corroboration under common law , Nigerian law. It shall also examine the position of judges and statutory authorities and will also analyses various issues arising from corroboration. This project is basically directed toward analyzing corroboration as known under the Nigerian law of evidence. There shall also be an insight into various circumstances as when, where and why corroboration is required.

### 1.1.0: BACKGROUND TO THE STUDY

The reason for venturing into this topic is based on personal interest in the concept “Corroboration” and the desire to shed more light on it by analyzing it critically. This work is therefore based on the analysis of corroboration under the Nigerian law of evidence. It analysis shall include discussion on the nature of corroboration, effect of corroboration and instances where corroboration will or must be required among others.

### 1.2.0: OBJECTIVES OF STUDY

The main objective of this essay is to critically analysis corroboration under the Nigerian law of evidence in order to shed light on the concept of corroboration under the our legal system. Furthermore, the essay tends to highlight circumstances where corroboration may or must be required. It will also show the effect of corroboration on a piece of evidence, natures of corroboration, the position of judges in corroboration issues and examine the provision of the Evidence Act on corroboration. The basis for analysis shall be for the purpose of showing new areas in the concept as a result of dynamism in the legal system.

### 1.3.0: FOCUS OF STUDY

This essay shall focus on corroboration under the Nigerian law of evidence and other instances surrounding it.

### 1.4.0: SCOPE OF STUDY

This essay shall not exceed the content of this title; it shall be within the purview prescribed by the topic. Though corroboration appears to be universal, its application differs in different situation and circumstance. This essay has it main focus on the critical analysis of corroboration under the Nigerian law of evidence.

### 1.5.0: METHODOLOGY

Both the primary and secondary sources of law are the basis for this research work. Thus the Evidence Act, Law text books, Law report, Articles on law, Various Statute and Cases on the subject matter are the sources of information. This project shall also be analytical in nature.

### 1.6.0: LITERATURE REVIEW

This work has been able to shed more light on the meaning of corroboration under the Nigerian law of evidence, analyzing views and postulations by different scholars and writers. The definition in this essay is limited to the resources used in the write up, this essay has successfully analyzed corroboration of evidence under the Nigerian legal system, Furthermore, corroboration of evidence has been critically analyzed under the common law and the Evidence Act, the effect of corroboration on a piece of evidence , the nature of corroboration and types of evidence requiring corroboration either as a matter of law or practice has also been examine . What amount to corroboration of evidence and the nature of uncorroborated evidence including the position of judges either to warn himself or to be cautious on issues of has been critically analyzed. The historical background of corroboration in Nigeria is examined and corroboration in civil and criminal cases is also examined.

### 1.7.0: CONCLUSION

The chapter one of this essay contain the proposal for the essay which include the Abstract, Background, Objectives, Focus and scope of the study. It also contains the methodology and the literature review of the essay which contain the various scholarly views and opinion concerning the subject matter.

**CHAPTER 2**

## PRINCIPLE OF CORROBORATION

### 2.0.0: INTRODUCTION

Corroboration though a foreign principle, has found a stronghold in the Nigerian legal system, though it’s origin can be traced traditionally as seen in the traditional system of justice before the reception of foreign laws and it origin can equally be traced to the importation of British laws and it subsequent incorporation into the evidence act. The meaning of corroboration, it nature and the types of evidence that must be corroborated before conviction can be granted shall be examined and it shall also have a conclusion.

**2.1.0: HISTORICAL BACKGROUND OF CORROBORATION IN NIGERIA**.

The principle of corroboration started in Nigeria as early as the society itself, before the establishment of the British courts, and it administration in Nigeria and before the enactment of the 1945 evidence act which contain major provision and guideline on corroboration cases, the primitive Nigeria society is equally known for justice where the elders are the hearing and the deciding council and they are guided by customs and traditions as binding among the people.[[1]](#footnote-0)

Up to 1945 there was no statutory provision either local or foreign governing the principle of corroboration in Nigeria, administration of justice and corroboration of evidence was based on common sense and the binding custom of the to ensure just adjudication in the society. The evidence act of 1945[[2]](#footnote-1) which contain a bulk of general rules relating to evidence which is made applicable and admissible to proceedings in Nigeria court by virtue of its provision in section 1(2) which provides that the act shall apply to all judicial proceedings in or before any court established in the federation of Nigeria has been observed to contain provisions to replace the common sense and cultural practices, likewise it has also be argued by scholars of different view that all that the evidence act of 1945 has done is probably to more than codifying the principle of common sense and natural justice which a tribunal of equity and good conscience should apply in order to guide it in its task of sorting out what evidence must be admitted and which should not be against a party in a proceeding, thus since common sense was not alien to our fore-fathers, it is not wrong to say that the contemporary law of evidence is not altogether new in the Nigeria traditional system, the implication of this is that before the British reached the shores of Nigeria with the contemporary rules of evidence, comparable rules to the contemporary rules were been observed and been applied in the traditional legal system which had always held by necessary implications that evidence should be relevant, admissible and corroborated before any party involved in the settlement of dispute could act on it[[3]](#footnote-2).

Today, traditional rulers still preside over minor disputes to a limited extent. Criminal trials are still undertaken by them if the parties submit to their jurisdiction. An illustration of a typical criminal trial where corroborating evidence will be demanded in a traditional legal system may now be made. Let assume Stella accused Paul of stealing her yam which she stored on her farm, the village head will summon Paul and confront him with the allegation, if Paul asserts that he did not do it, then the village head will call on Stella to proof her allegation of stealing against Paul placing the burden of proof on Stella, if Stella merely reacts by saying that “ I was told that it was Paul who stole my yam” this piece of evidence will certainly be rejected as “hearsay” unless it is corroborated.

The village head would rather want to hear from the mouth of the person who claim he saw him removing the yams, if however Stella had said in attempting to proof the allegation, that Paul must have stolen the yams because he stole the previous year either on her farm or on someone else’s farm, this will not be admissible in evidence if Paul had been punished for that offence[[4]](#footnote-3). If on the other hand, Stella’s testimony had been that she saw Paul while removing the yams and when she shouted, in an attempt to run away his right leg sandal dropped which she now produced and Paul in unable to explain how he lost his sandal, the testimony of Stella will be corroborated by the pair of shoes and will be admitted against Paul.

### 2.2.0: MEANING / DEFINITION OF CORROBORATION

As a general rule no particular number of witnesses is required in order to discharge the onus of proof which lies upon a party and a court cannot take into account the numbers of witnesses who has given evidence for each side as a relevant factor in deciding which should succeed, what should be consider is the quality not the quantity of the evidence, therefore a person can be convicted of any offence on the testimony of a single adult witness just as a plaintiff in a court suit can succeed on the evidence of a single credible witness (Hamidi musa & ors V. Yahaya kefas yerima & Anor[[5]](#footnote-4) ) ( Emmanuel Ugwumba V. State[[6]](#footnote-5) ). Stephen Emoga V. State[[7]](#footnote-6).

To a lay man, corroboration can simply mean to support or substantiate piece of information, to corroborate a piece of evidence may also mean to authenticate it by giving an additional supporting or supplementary evidence as a backup. In the legal parlance corroboration is confirming, enforcing, and reinforcing evidence supporting another evidence of the same fact[[8]](#footnote-7). Corroborative evidence is evidence that shows that a crime has been committed and it has been committed by the accused. A corroborative evidence or testimony is not a repetition of the confession of the accused but a confirmation of witness evidence by an independent testimony; it is also the authenticating of a testimony by showing that a crime has actually been committed by the accused charged. For any evidence to amount to corroboration, according to Lord Hewait C.J in the case of R V. Whitehead[[9]](#footnote-8) where he stated as follows:

In order that evidence may amount to corroboration, it must be extraneous to the witness who is to be corroborated.

Corroboration can be Oral, Real, Documentary or circumstantial as seen in the case of Olaleye V. State[[10]](#footnote-9) as long as it is independent. In that case, a man rape a girl of 14 years the girl was examine and was found to have the same gonorrhea found in the man accused of the rape. The judge held that the presence of the same type of gonorrhea in the girl is enough as circumstantial corroborative evidence.

Corroboration can be by conduct {R v. Johnson Eruku[[11]](#footnote-10)[[12]](#footnote-11)}; it can also be by admission {R v Francis kufi[[13]](#footnote-12)[[14]](#footnote-13)}.

A lie can as well serve as corroborative evidence; silence at times may amount to corroborative evidence in the circumstance where the accused refuse to talk where he reasonably ought to this station have talked. However it is not in all cases, it is often left at the discretion of that court to determine under each condition whether such silence amount to corroboration or not[[15]](#footnote-14).

Corroboration also connotes support or confirmation, in relation to the law of evidence, that certain evidence (the evidence to be corroborated) is confirmed in its tenor and effect by other admissible and independent evidence (the corroborating evidence). In any case where one piece of evidence confirms and supports corroboration therefore takes place if both piece of evidence are accepted by the tribunal of facts. Corroboration though a necessity or mandatory requirement as the case may be has two extreme ends. In the sense that a complete disregard for the desirability of corroboration may indicate a lack of sensitivity to the inherent unreliability of certain types of evidence and may render some decisions unsafe on the other hand, a rigid insistence upon corroboration may unnecessarily damn many a perfectly sound case which has the misfortunate to have been witnessed by only one person[[16]](#footnote-15).

### 2.3.0: NATURE OF CORROBORATION

The aim of examining the nature of corroboration is to justify in various situations the effect where corroboration is neglected contrary to the provision of the law or misdirected. The preliminary point to hold is that a person can not corroborate himself, otherwise as the learned Chief Justice Hewart pointed put in the case of R v Whitehead[[17]](#footnote-16) “the witness will only have to repeat his story some twenty- five time in other to get twenty-five corroboration of it ”[[18]](#footnote-17). Also in the English case of R v Christie[[19]](#footnote-18) in that case was charged with indecent assault upon a little boy who gave unsworn evidence, the boy’s mother and a police gave the evidence of what the boy had earlier told them shortly after the incident, the house of lord held that these witness could not corroborate the evidence of the boy because the testimony of the boy has narrated to the mother and police is just one testimony from one person. The position of the English courting the case is regarded as representing the rule of Nigerian law on the matter in spite of the clear provision of section 214 of the Evidence Act[[20]](#footnote-19) to the effect that :

*“In order to corroborate the testimony of a witness, any former statement made by such witness 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*”

What the Nigerian court does is to admit such previous statement in order to prove the consistency of the complainant’s story but not as corroboration[[21]](#footnote-20). It is a well known principle of corroboration that an evidence if an evidence which is not corroboration is treated as such, any verdict given in this circumstance would be quashed on appeal unless the court of appeal is of the opinion that no substantial miscarriage of justice had occur. Peter Murphy[[22]](#footnote-21) a learned in the study of evidence gave a comprehensive analysis of the nature of corroboration in his book titled a practical approach to evidence where said that in order for an evidence to be capable in law of constituting corroboration, such evidence must be

1. Admissible itself
2. From a source independent of the evidence to be corroborated and
3. Such as to tend to show by confirmation of some material particularly not that the offence charged was committed but also that it was committed by the defendant.

In R v Basker[[23]](#footnote-22) Ville lord Reading C J expressed the requirement in the following terms:

*………. 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 implicate him, that is which confirm in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it.*

*The test of applicability to determine the nature and extent of the corroboration is the same whether the case fall within the rule of practice at common law or within the class of offences for which corroboration is required by statute. Admissibility, this mean that the evidence itself must confirm to the general rule of admissibility and so be capable of being received for the purpose of proving guilt as charged.*

Independent, it obvious that confirmation of the evidence of a witness is worthless coming from the witness himself or for that matter from one with who the witness has been in collusion.

In R v Whitehead25 where the defendant was charged with an unlawful sexual intercourse with a girl under the age of sixteen, it was suggested that the girl’s recent complaint made to her mother was capable of constituting the necessary corroboration of her evidence but lord Hewart C J pointed out that if that were the case, it is only necessary for her to repeat her story some twentyfive times in order to get twenty-five corroboration of it, therefore even where at common for law a previous statement made by the witness is admissible as in the case of a recent complaint, it cannot amount to corroboration of the witness evidence. However, a somewhat different rule has developed in regard to the visible distress of the complainant, which is witnessed independently. This has been held to be evidence capable of amounting to corroboration of the complainant evidence subject to the two conditions that it must be observed independently and that it must appear to the court to be genuine and unfeigned[[24]](#footnote-23).

In R V Chauham[[25]](#footnote-24), in that case the defendant was charged with indecent assault on a woman. The complainants extricated herself and ran into lavatory, where she was observed by a fellow employee who had heard her cry. The defendant admitted that he had been with the complainant but denied any wrong doing and said that the complainant had been behaving normally. The trial judge left the complaint distress to the jury as potentially corroboration of her evidence[[26]](#footnote-25). On appeal, the court of Appeal went out of it way to praise the clarity of the judge’s summing up in this regard and held that he had right to permit the jury to consider the complaint’s visible distress about which the fellow employee (independent observer) has testify with a clear warning to regard as corroboration only if they were sure that the distress was genuine and unfeigned[[27]](#footnote-26). In R v Redpath[[28]](#footnote-27) Lord Parker C.J pointed out that in some cases for example where the distress is no more than part and parcel of a recent complaint made by a girl to her mother, the jury should be directed to attach little or no weight to it. Indeed it is submitted that such a case, even where the distress is witnessed by an independent person, the evidence lacks the quality of independence necessary for potentially corroborative evidence and should be left to the jury as such. It is however submitted that because of the inevitable doubt as to independence and genuiness, Lord Parker should be scrupulously heeded[[29]](#footnote-28).

At common law, previous consistent statement put in cross-examination or document used to refresh the memory admitted as a result of cross examination are admissible only exceptionally and even when they are not evidence of the truth of facts stated therein so that they lack both admissibility and independence when assessed as possible corroborative evidence. In civil cases however, previous statement made by a witness are now by statute not only admissible but admissible as evidence of the truth of facts states therein subject to the provision of section 2, 3, and 4 of the civil evidence act[[30]](#footnote-29). It is also necessary to deal expressly with the statute of such statement for the purpose of corroboration and the Act confirms that the lack of independence preclude their use for this purpose. Section (4) of the act provides:

*For the purpose of any enactment or rule of law or practice requiring evidence to be corroborated or regulating the matter in which uncorroborated evidence to be treated*

1. *A statement of which is admissible in evidence by virtue of section 2 or 3 of that act shall not be capable of corroborating evidence given by the maker of the statement and*
2. *A statement which is admissible in evidence by virtue of section 4 of that act shall be capable of corroborating evidence given by the person who originally supply the information from which the record containing the statement was supplied*

*For the same reason Para of schedule 2 to the Criminal Justice Act 1986 provides that a hearsay statement admissible in criminal proceeding by virtue of Part II of the Act shall not be capable of corroborating evidence given by the maker of the statement. And whenever a video recording of the evidence of a child witness is admitted by virtue of section 32A of the Criminal Justice Act 1988 subsection (6) ( b) of that section provides that statement made in the recording by the witness shall not be capable of corroborating other evidence given by him.*

#### 2.4.0 EVIDENCE REQUIRING CORROBORATION

When the problems of reliability of witness arise in a suit, this suggest that in such suit no conviction should be based wholly or mainly upon the evidence from such a single witness, though recent legislation has gone in the opposite direction and shows that there is little possibility of establishing such a principle but certain categories of evidence have been singled out as being less reliable than previously thought and as requiring if not a corroborating evidence at least a caution to the jury about convicting solely or mainly upon such evidence. The general rule that no particular number of witness is required in order to discharge the onus of proof which lies on a party there is a number of exceptions which include the following:

1. EVIDENCE OF AN ACCOMPLICE: there is no definition for an accomplice in the act and as the West Africa Court of Appeal has pointed out in Nweke v R[[31]](#footnote-30) “no formal definition is possible because by and large this is a question of fact in each particular case”. In common parlance an accomplice is any person who actually does the act or make the omission that constitute the offence or anybody who does or omit to do any act for the purpose of enabling, aiding or abetting another person to commit an offence or every person who aid another in committing the offence or anybody who counsels or procure another to commit the offence. Anybody who falls into the class of people mention above either by propagating, instigating, aiding or abetting the perpetrator or help the actual perpetrator to escape punishment are participee criminix thus, they can be charged and punished for the same offence as the actual criminal[[32]](#footnote-31). Judicially an accomplice was define by Hallinan j in R v Okoye & Anor[[33]](#footnote-32) by stating that “a witness in only an accomplice if he is a person who might on the evidence be convicted of the offence with which the accused is charged”[[34]](#footnote-33).

Under section 78 (1) of the act[[35]](#footnote-34), where the only proof against a person charged with an offence is the evidence of an accomplice uncorroborated in any material particularly implicating the accused, The judge must warn the jury that it is unsafe to convict the accused upon such evidence though they have the legal right to do so, they are expected to look for an independent evidence firstly because the accomplice may invent an offence an d accuse someone of committing it and secondly he may falsely accuse someone else of an offence that had been committed.

1. AGENT PROVOCATEURS: the term “agent provocateurs” has been used by Nigerian

courts to mean (a) police officers and their aides who positively incite or provoke then join in the commission of a crime and (b) such officers and aides who being aware that a person or group of persons has manifested a clear intention to commit a crime but join in to facilitate the commission of the crime in order that the criminals may be caught. The evidence of an agent provocateur who fall with the first class must be corroborated in some material particular by independent evidence tending to show that both the alleged crime was committed and that the accused participated in it[[36]](#footnote-35). When used in the second sense, public order and safety demand that the evidence of the police or his aides should be sufficient to fund a conviction.

1. TAINTED WITNESS: The “term tainted” witness does not appear in the Evidence Act or in any other Nigerian act, it will be impossible to give it a fixed definition however it has been used to mean an intermediate stage between an accomplice and non-accomplice[[37]](#footnote-36). The term was also used by the Supreme Court in the famous 1963 “treasonable felony” trials involving the leader of opposition in parliament.

A full bench of the Supreme Court held that a tainted witness was not an accomplice whose evidence required corroboration[[38]](#footnote-37). Dissenting to this point, Mbanefo Ag. J.S.C was of the view that though a tainted witness was not an accomplice in the strict sense but he is of the view that a tainted witness is one whose evidence would be unsafe to act upon without corroboration. Another form of a tainted witness is a person who is not an accomplice but a witness with his own interest or who have some purpose of his own to serve. Edmund J. said in R v Prater[[39]](#footnote-38). that “in cases where a person may be regarded as having some purpose of his own to serve, the warning against uncorroborated evidence should be given”. This principle was also applied by the Supreme Court in Williams Idahosa & ors v. R[[40]](#footnote-39)[[41]](#footnote-40), where the court held that the evidence of witnesses should be corroborated before given a verdict.

1. SEXUAL OFFENCES: Section 178(5)[[42]](#footnote-41) relating to sexual offences provides to the effect that a person cannot be convicted of certain sexual offences upon the uncorroborated testimony of one witness. The offences are: defilement of girls under 13 years of age, defilement of girls between 13 and 16 years of age and of idiots, procuration, and procuring the defilement of

women by threats or fraud or administering drugs contrary to sections 218, 221, 223 and 224 of the criminal code respectively. In all these cases the trial court must direct[[43]](#footnote-42) the jury or itself that corroboration is required as of law, failure to give such direction is fatal to the conviction. Even if the direction is given, the conviction will be quashed if in fact there is no evidence which can be properly regarded as corroboration

1. UNSWORN EVIDENCE OF CHILDREN: Section 183(3) of the act provides that a person shall not be liable to be convicted of an offence based on unsworn evidence of a child unless such evidence is corroborated by some other material evidence in support thereof implicating the accused. Such material evidence must come from an independent source and must not be evidence which itself requires corroboration however the evidence of one single witness can provide the corroboration required in R v Francis kufi44. a girl of ten, after the normal examination was observe to be incapable of understanding the nature of an oath was allow to give evidence not on oath as she was found to be sufficiently intelligent to understand the duty of speaking the truth. In this case it was held that the admission of the offence by the accused to the father of the girl provided the needed corroboration[[44]](#footnote-43).

An unsworn testimony of another child cannot provide the corroboration required for the unsworn testimony of a child which itself requires corroboration but the sworn testimony of another child or of an adult can serve as sufficient corroboration[[45]](#footnote-44).

1. TREASONABLE OFFENCES: An important exception to the rule that the court can convict a person for an offence on the testimony of one witness only is the case of treasonable offences. Section 179 (2) (a) of the Act the subsection provides no person charged with treason, concealment of treason, treasonable felonies and promoting native war, contrary to section 37, 40, 41 and 42 of the criminal code respectively, “can be convicted except on his own plea of guilty or on the evidence of one witness to one overt act and one other witness to another overt act of the same kind of treason or felony”. In R v Michael Adedapo Omisade47. It was held by the full bench of the Supreme Court that it is not necessary that a witness must be able to testify to an overt act in it entirety but it is sufficient if a number of witnesses give evidence of “snippets” which add up to proof of an overt act.

The rule that corroboration is required in proof of treason (barring where the an accused person has pleaded guilty) is however inapplicable in cases in which the overt act of the treason alleged is the killing of the head of state or a direct attempt to endanger the life or injure his person, in this case the evidence of a single witness is sufficient to sustain a conviction48.

1. BREACH OF PROMISE OF MARRIAGE: The Evidence Act and also the courts as a

matter of practice have decided that corroboration is necessary in an action for a breach of promise of marriage. Section 176 of the Evidence Act provides as follows:

1. 1964 N.M.L.R 67
2. sec 179 (2) (b)

No plaintiff in any action for breach of marriage can recover a verdict, unless his or her testimony is corroborated by some material evidence in support of such promise.

This provision is similar to that of the English Evidence Act[[46]](#footnote-45)[[47]](#footnote-46) which provides that the defendant’s consistent reference to the plaintiff as his fiancée some time before the alleged engagement was sufficient corroboration[[48]](#footnote-47). In general the conduct of the defendant to the plaintiff will be sufficient because the provision does not require the testimony of another witness but some other material evidence in support of such promise[[49]](#footnote-48). In some cases mere failure to deny an allegation of the existence of promise to marry made in the presence and to the hearing of the defendant may provide the required corroboration but largely depend on the fact of each case. In the English case of Bessela v. Stern[[50]](#footnote-49). The plaintiff gave the evidence that the defendant promised to marry her. A witness called by her, who was her sister, deposed to the fact that she had heard her say to him, ‘you always promise to marry me and you don’t keep your word’ and that the defendant made no reply to that apart from giving the plaintiff money and asking her to go away. It was held that that the defendant’s silence amounted to an admission of the promise and that the evidence of the witness could be treated as material evidence in support for the purpose of the provision.

H) OTHER OFFENCES: there are some other offences for which conviction cannot be heard on the uncorroborated testimony of a single witness, it is necessary to state that in all the cases the sections of the criminal code creating the offences specifically make provision for the requirement of corroboration apart from the provision of the Evidence Act[[51]](#footnote-50). The first of such offences is perjury. Section 179(3) of the Act provides that a person cannot be convicted of committing perjury or of counseling or procuring the commission of perjury upon the uncorroborated testimony of one witness, contradicting the oath on which perjury is assigned unless circumstances are proved which corroborate such witness and a section of the Criminal Code[[52]](#footnote-51) specifically provides that a person cannot be convicted of committing the offence of perjury or of counseling or procuring the commission of it upon the uncorroborated testimony of one witness.

Another offence is sedition. Another Section of the act[[53]](#footnote-52) provides inter alia that a person cannot be convicted of uttering seditious words upon the uncorroborated testimony of one witness. Similar provision is contained in the Criminal Code itself. Section 52(3) stipulates that no person shall be convicted of an offence under paragraph (b) of sub-section 1 of 51(the section creating the offence) on the uncorroborated testimony of one witness therefore corroboration is required.

In addition, there is the offence of exceeding speed limit. By virtue of the provision of Section 179(4) of the Road Traffic Law (Cap 172 Laws of Lagos State 1994), a person charged with driving at a speed greater than the allowed maximum cannot be convicted solely on the evidence of one witness that in his opinion the accused was driving at such a speed. Example of such corroborating evidence is an accurate speedometer. Corroboration is in forms and types, this chapter shall make an expository elucidation the various forms and types of corroboration, instances where corroboration is required either as of practice or of law, the various problems facing corroboration and the identified solution shall also be examine including the role of judges in corroboration issues.

#### 2.5.0 CONCLUSION

This chapter has done justice to the meaning of corroboration, it nature, historical background in Nigeria and types of evidence that must be corroborated before conviction can be granted has been critically examined.

### CHAPTER 3

**RULES/ FORMS OF CORROBORATION.**

**3.0.0: INTRODUCTION.**

This chapter shall proceed to discuss the forms: (corroboration as matter of law and corroboration as a matter of practice) and types of corroboration: (Mutual corroboration, Cumulative corroboration and corroboration in identification cases) in existence under our legal system. It shall examine the position of corroboration under the common law and it shall also have a conclusion.

#### 3.1.0: FORMS OF CORROBORATION

**3.1.1.0: CORROBORATION AS A MATTER OF LAW.**

In some cases, corroboration may be required as a matter of law prescribe by statutes. For example;

A) Perjury Act56 provides that “A person shall not be liable to be convicted of any offence against this act or of any offence declared by any other Act to be perjury or subordination of perjury, or to be punishable as perjury or subordination of perjury solely upon the evidence of one witness to the falsity of any statement alleged to be false”

56 1911

1. Representation of the people Act57 also provides that “a person charged with personating shall not be convicted except on the evidence of not less than 3 credible witnesses”

1. Road Traffic Regulation Act58 equally makes provision in this regard where it provides that “A person who drives a motor vehicle on a road at a speed exceeding a limit by or under any enactment to which this section applies shall be guilty of an offence”. It can be observed from the above provision of the law that the exception within this category are statutory case and that the absence of evidence capable of amounting to the necessary corroboration will be fatal to the conviction or judgment. It must also follow that if the jury rejects all the evidence capable of amounting to such corroboration, no conviction is possible and they should be directed in those terms. The terms and extent of the corroboration required in each case are provided for by the statute itself, and except as so provided for no further corroboration is necessary as a matter of law. It may of course happen that the evidence in a particular case may be such as to bring the case also within one of the practices exceptions, so that the corroboration necessary to such cases will have to be looked for, but this will be coincidental and in general only the requirement of the statute needed be observed. The number of cases in this category has been subjected to steady erosion. The unsworn evidence of a child is permitted by an act59 was originally made subject to

1. 1983
2. 1984
3. Children and young person act 1988

the express statutory provision that a defendant might not be convicted of a criminal offence on the basis of such evidence, unless it was corroborated by some other material evidence in support therefore implicating the him[[54]](#footnote-53).

At common law, even the sworn evidence of a child of tender years required a corroboration warning, though such sworn evidence fell into the category of corroboration looked for as a matter of practices so that conviction on the uncorroborated sworn evidence of a child was possible[[55]](#footnote-54). The common law requirement also was abrogated in relation to trait on indictment by the Criminal Justice Act62 in two different sections both provision has been repealed and children must now give evidence unsworn in criminal cases by virtue of the Criminal Justice Act63 which contain no requirement of corroboration. Affiliation proceedings, in which corroboration of the evidence of the complainant was also required as a matter of law by the Affiliation Proceeding Act 64 were abolished by Family Law Reform Act65 and no new corresponding provision for cases involving the issue of paternity has been introduced. A requirement of corroboration in case of corrupt and illegal practices at election is contained

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1991

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1957

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1987

successfully in the Representation of The People Act66 and Representation of the People Act67 under different section has likewise been abolished. The principal cases which remain are as follows:

A) TREASON**:** In a prosecution for high treason by compassing death or restraint of the sovereign. It is provided by the Treason Act68 that there should be no conviction without “then oath of two lawful and credible witnesses’. The use of the word “credible” must presumably be taken to import that the jury must accept the evidence of both or all such witness and be prepared to act on the evidence of each taken individually. The rule that at least two witnesses are required in proof and conviction of treason can be found in the Evidence Act69 where it was provided that “No person charged with treason, concealment of treason, treasonable felonies and promoting native war, contrary to section 37, 40, 41 and 42 of the Criminal Code respectively can be convicted except on his own plead of guilt or on the evidence of one witness to one overt act and one other witness to another overact of the same kind of treason or felony ”.

The above point came up for consideration in the by the highest court in the land in the famous 1963 treasonable felony trials involving the leaders of opposition in the parliament, the case of R v Michael Adedapo Omisade and or70. In this case it was held by the full bench of the Supreme

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1949

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1983

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1963

Court that it is not necessary that a witness must be able to testify to an overt act in its entirety but it is sufficient if a number of witness give evidence of “support” which add up to proof of an overt act. This view was reaffirmed by the Supreme Court in the case of Anthony Enahoro v R71.

B)PERJURY: Perjury was the one exception known to the common law in which the evidence of one witness was insufficient for conviction. However, the position is now governed by the Perjury Act72 which provides that “a person shall not be convicted of any offence against the act or of any other statutory offence of perjury or subornation of perjury, solely upon the evidence of one witness as to the falsity of any statement alleged to be false”. It will observed that the statute prescribe the element of the offence for which corroboration is required that is to say the falsity of the statement and no requirement is imposed in respect of other element of the offence. The corroborative evidence must therefore be directed to that issue. It is necessary to note that the requirement of corroboration as a matter of law in the offence of perjury is provided for in the sections of the criminal code creating the offence and there are also specific provision for the requirement of corroboration as of law in perjury cases. In section 179 (3) of the Evidence Act73 which provides “that a person cannot be convicted of committing perjury or of counseling or procuring the commission of perjury upon the uncorroborated testimony of one witness,

1. 1965
2. 1911
3. 1945

contradicting the oath on which perjury is assigned, unless circumstance are proved which corroborate such witness ” and section 199 of the Criminal Code specifically provides that a person cannot be convicted of committing the offence of perjury or of counseling or procuring the commission of it upon the uncorroborated testimony of one witness. In R v Salami Ogunubi[[56]](#footnote-55) it was staneously argued that it was not necessary to have more than the uncorroborated testimony of one witness as to the falsity of the statement but that what was required was merely the corroboration of the fact that the accused made the statement alleged. These arguments were rejected and it was held that corroboration was required not merely as to the making of the alleged false statement but as a matter of law as provided by the statute to prove the falsity of the statement.

1. EXCEEDING SPEED LIMIT**:** By the provision of the Road Traffic Law[[57]](#footnote-56), a person charged with driving at a speed greater than the allowed maximum cannot be convicted solely on the evidence of one witness that in his opinion the accused was driving at such a speed. Although the evidence of opinion of persons who are not experts is generally inadmissible but it would appear that the evidence of the opinion of two credible witness that the accused was driving at a greater speed than that allowed will be sufficient, provided that their opinion relate to the speed of the accused over the same stretch of road and at the same time and such requirement of two credible witness is not optional and it does not depend on the circumstance of the case, the req[[58]](#footnote-57)uirement is constant and compulsory because it is statutorily required as a matter of law. It has been held under a similar provision of the English Traffic Act76 1934 which replaced the same act of 1930. It was held in Nichole v Penny[[59]](#footnote-58) that a police officer’s evidence that he followed the accused in a police car and consulted the speedometer which shows that the accused was driving at an excessive speed was sufficient for a conviction since the speedometer corroborated the evidence of the police officer[[60]](#footnote-59).

Also, the Road Traffic Regulation Act [[61]](#footnote-60)[[62]](#footnote-61) provides that a person charged with an offence of exceeding the speed limit shall not be convicted solely on the evidence of one witness to the effect that in the opinion of the witness the person persecuted was driving the vehicle at a speed exceeding a specified limit[[63]](#footnote-62). The purpose of this provision is to provide a safeguard against the possible unreliability of such evidence of opinion, because of the likelihood of error in relating an impression of the speed of a vehicle to a precise speed limit. The corroboration must go with the observation of the witness as held in the case of Brightly v Pearson[[64]](#footnote-63). However, the evidence of requiring of a speedometer or other measuring device is evidence of fact, so that reading of such instrument are not within the section and indeed may themselves be corroborative of opinion evidence of observation.

1. SEXUAL OFFENCES**:** The Evidence Act[[65]](#footnote-64) makes provision related to sexual offences and they are to the effect that a person cannot be convicted of certain named sexual offences upon the uncorroborated testimony of one witness, the offences are defilement of girls under 13yrs of age, defilement of girls between 13 and 16 years of age and of idiots, procuration, and procuring the defilement of woman by threats or fraud or administering drugs contrary to section 218,221,223 and 224 of the Criminal Code respectively. All these various sections of the code provided also that a person cannot be convicted of the offences upon the uncorroborated testimony of one witness. In all these cases, the trial court must direct the jury or itself that corroboration is necessary as a matter of law and failure to give such direction will be fatal to a conviction, even if the direction is given, the conviction will be quashed if in fact there is no evidence which can properly be regarded as corroboration.

Sexual Offences Act,83 also emphasized the requirement of corroboration as a matter of law in the following sections 2,3,4,222 and 23 and the sections all provide to the effect that a person shall not be convicted on the evidence of one witness only unless the witness is corroborated in some material particular by evidence implicating the accused. The extent of the corroboration

83 1956

required in sexual offences is equated by the statute with that looked for at common law in the practices of exception under the rule in Baskerville.

1. EVIDENCE OF AN ACCOMMPLICE**:** An accomplice is every person who does or omits to do any act for the purpose of enabling, aiding or abetting another person to commit an offence or any person who counsels or procure another to commit the offence. Section 178 (1)[[66]](#footnote-65) says it is not illegal for the court to convict an accused based on the uncorroborated evidence of an accomplice, but the judge must warn himself whether it is save to use such evidence but where the judge can get an independent corroborative evidence, he should go for that.

1. EVIDENCE OF A CO – ACCUSED: Though it is said that a co – accuse should not be treated as an accomplice whose evidence needs corroboration. A co – accused evidence does not need corroboration because he is an accused himself, thus the court can accept the evidence of a co – accused without corroboration but the court is warn to be cautious in using the evidence and thus seek for a corroborative evidence[[67]](#footnote-66).

1. UNSWORN EVIDENCE OF A CHILD**:** Corroboration in regard to the unsworn evidence of a child is required as a matter of law. The unsworn evidence of a child needs corroboration, the unsworn evidence of a child cannot serve as a corroborative evidence for another unsworn evidence of a child because evidence that need corroboration cannot serve as corroborative evidence for evidence that need corroboration[[68]](#footnote-67)[[69]](#footnote-68).

1. BREACH OF PROMISEOF MARRIAGE**:** According to section 177 of the Evidence Act87. There must be corroboration order to recover a verdict in an action for failure or break in promise of marriage. Physical denial of a promise of marriage amount to corroborative evidence, also a letter to a spouse asking if he|she is still going to marry the spouse without a reply is not corroborative evidence[[70]](#footnote-69).

1. SEDITION: Section 179 (5)[[71]](#footnote-70) In charge of sedition, there is need for a corroborative evidence to secure a conviction over an accused charged for sedition.

**3.1.1.1 CORROBORATION AS A MATTER OF PRACTISE.**

The following are the instances where corroboration is required in practice.

1. SEXUAL OFFENCES: Normally, the court will not convict an accused of a rape offence

without corroboration. However, barring the sexual offences refer to under the provision of section 178 (5) corroboration is not required as a matter of law in any other cases of sexual offence, thus conviction may be based on the uncorroborated evidence of the prosecutrix. It would appear that the Nigerian courts following the English courts now take the view that in the case of sexual offences where corroboration is not required as a matter of law it will be required as a matter of practice of the courts and that it is incumbent on the judge to direct the jury that it is not safe to convict on the uncorroborated testimony of the prosecutrix but if they are satisfied of the truth of the testimony the court can convict based on a sole evidence of the victim but the court is warn to seek other independent evidence as held in Ibeakanma v State90 (1968) 2 SCNLR 191.

1. MATRIMONIAL CAUSES**:** It is important to note that there is no statutory provision requiring that corroboration is necessary for the proof of any the matrimonial offences, the courts have however developed the following rules as regarding corroboration in matrimonial offences.

Where the alleged matrimonial offence is either adultery or cruelty, then no corroboration is required although it is advisable to have it. In practice the courts are reluctant to grant a petition based on either of these offences on the mere evidence of the petitioner unless such evidence of the petitioner is very strong and convincing. In olufela sowande v mildred sowande91.

1. (1968) 2 SCNLR 191
2. 1960 L.LR 85

DICKSON J summarized the position as follows “of course, it is quiet plain that a court will not necessarily refrain from pronouncing a decree simply because the evidence is uncorroborated” but the court would hesitate before granting a divorce on the sole and unsupported testimony of a petitioner. The need for corroboration is greater in an undefended case than in a defended one.

In a proper case the court will act on the uncorroborated testimony of the petitioner in Josephine aduke oshinloye v folorunsho adewale oshinloye92 Dickson J held that in the case of cruelty it is the practice of the court to require corroboration and not a rule of law and it has never been decided that the court is not entitled in a proper case se where it is not in doubt where the truth lies, to act upon the uncorroborated testimony of the petitioner.

Divorce is more easily granted on the unsupported testimony of a petitioner in a defended case than in an undefended one because in undefended case the possibility of collusion is greater than in defended one.

1. EVIDENCE OF CLAIMANTS**:** concerning the testimony or evidence of claimants to the property of the deceased the court will look as a matter of practice for corroboration of the evidence of such person within this class since there is no requirement as a matter of law.
2. SWORN EVIDENCE OF A CHILD**:** The sworn evidence of a child stand in the same

position of the evidence of an adult, it is not illegal for the court to convict based on such

92 1960 L.LR 18

evidence as long as it is reasonable and credible but in practice the court may seek corroborative evidence. Onyegbu v state[[72]](#footnote-71)[[73]](#footnote-72).

At common law the sworn evidence of a child of tender year was an established a category of evidence that required corroboration warning, there was no specific age at which a child ceased to require the warning as in the case of the assessment of the competency of a child, this has been a matter left to the discretion of the judge who had the advantage of seeing and hearing the child give evidence[[74]](#footnote-73). By virtue of section 52 of Criminal Justice Act[[75]](#footnote-74)[[76]](#footnote-75) children must give evidence sworn in criminal cases however this section does not provide for any requirement of corroboration either as a matter of law or practice. The requirement of corroboration on the sworn evidence of a child has been established as a matter of practice because of the risk of hysteria, invention, childish imagination and collusion. At common law the rule is that the judge should warn the jury of these risks if there is any possibility that they might be present[[77]](#footnote-76). In R v Spencer[[78]](#footnote-77) it was held that the rule requiring warning in a child evidence was one born out of the experience of the court accumulated over many years.

E) CONFESSINONAL STATEMENT:The court can convict an accused based on confessional

statement if it is free and voluntary, direct and positive and if the court is satisfy with the truth of the confession but as a matter of practice the court may seek for corroborative evidence.

#### 3.2.0: TYPES OF CORROBORATION

**3.2.1.0: MUTUAL CORROBORATION**: by mutual corroboration, it means the use of evidence of two or more witness each of when require; as a matter of law or practice to be corroborated for the purpose of affording corroboration inter se and so satisfying the requirement in each case irrespective of any evidence from other sources capable of affording corroboration[[79]](#footnote-78). The rule is that except in one case, mutual corroboration is always permissible and is in law sufficient to satisfy the requirement in respect of each witness. The exception is the evidence of two or more accomplice being ‘participes criminis’ in the offence charged. The restriction does not affect the evidence of accomplice within the other two categories laid down by Lord Simonds in Davies v DPP[[80]](#footnote-79).

**3.2.1.1: CUMMULATIVE CORROBORATION**: there may of course be several piece of

evidence that are independently capable of corroborating evidence that require corroboration, in such a case, the judge should in his summing-up identify all such evidence and leave the jury to assess the respective weight of each piece of evidence but a distinct question has been identified of whether several piece of evidence, which are individually incapable of constituting corroboration may together be capable of constituting corroboration because of their cumulative effect. As to the acceptance and legitimacy of this approach to the evidence there are two views, the first view states that the sum total of a number of a piece of evidence , the value of each of which as corroboration is nil must also be nil[[81]](#footnote-80). This is superficially an attractive preposition however, a second view is that evidence cannot be consider in such abstract mathematical term, it is well recognized in the context of permissible area of proof and the rules against hearsay are expressed in the res gestae principle that a fact or event must be considered as a whole and with due regard to all surrounding circumstances including facts related in time and place. Prof. Cross[[82]](#footnote-81) argued cogently that the whole picture surrounding say a rape case may be such as to corroborate the complaint’s evidence abundantly even though any one of the piece of evidence which to make up that picture taken individually may be sufficient because for example, it does not implicate the defendant. It is submitted that the jury should be limited to consider the whole picture.

Of course, it may be that in some cases the whole picture is in fact not better than the parts taken individually and in such cases that must be accepted. In R v Hills[[83]](#footnote-82) for example, the conviction was quashed where the trial judge left to the jury three pieces of evidence as cumulative corroboration some of which depended on the evidence of an accomplice and some of which failed to implicate the defendant in the commission of the offence[[84]](#footnote-83). An important point was that there was no way to determine which of this piece of evidence might have been accepted by the jury as corroborative. Accordingly, while the court of appeal confirm that cumulative corroboration is possible as a matter of principle, it also emphasized that great care must be taken in identifying for the jury that evidence which they are entitled to consider[[85]](#footnote-84). The court of appeal clearly has some sympathy with the trial judge, since Prof Cross’s view of the whole picture, the overall case against the defendant was a strange one but precision in identifying the parts of the picture is crucial.

The question of cumulative corroboration was discussed at length in Thomas v Jones[[86]](#footnote-85). In that case the appellant was charged on the complaint before the Radnor Justice with being the father of a bastard child born to his housekeeper, the respondent and was adjudge to be the father. The evidence showed that the appellant was a bachelor father, and that the respondent had reside in his house, that on that morning of the birth, when the respondent was in labor the appellant (who had no other female servant) lit a fire for her and gave her brandy, the appellant sort for a doctor, that after the birth he permitted the respondent and the child to reside in the house for five weeks and that when the respondent subsequently wrote to him enquiring whether he want to pay for the child, the appellant did not reply to her letter[[87]](#footnote-86).

The Division Court held that although none of the above facts taken singly was capable of amounting to the required corroboration of the respondent’s evidence, their cumulative effect might do so.

The Earl of Reading CJ[[88]](#footnote-87) said:

In this case, I come to the conclusion that there is in law, evidence upon which the justice could decide that the respondent’s testimony was corroborated in some material particular by other evidence. Each fact found by the justice as tending to corroborate the respondent’s evidence may by itself be sufficient as corroboration but the cumulative effect of the evidence regarded not separately but collectively may be and I think in this case is sufficient. I am not unmindful of the argument that this evidence is equally consistent with action, dictated by kind and human consideration but I think the circumstances proved taken in conjunction with the omission to answer the letter are sufficient to justify the magistrate’s decision. The question now is one rather of the right inferences of fact than one of law.

Avory J. dissented on the ground that in his opinion, the pieces of evidence taken together were perfectly consistent with the action of a humane employer towards a female servant who was in trouble and had nowhere to go. It would therefore be dangerous to permit them to be regarded as potentially corroborative because whether taken singly or together they did not implicate the appellant in the paternity. This view is not inconsistent with the view of the majority. The cumulative corroboration may be permissible on the right of facts[[89]](#footnote-88).

In the court of Appeal, the case produced another division. Scrutton LJ agreed with the majority in the division court on the ground that he could not say that the magistrate with their local knowledge had been wrong to regard the cumulative facts as corroboration, even if the learned Lord Justice might personally have taken a different view. But the majority (Atkin LJ $ Bankes) held that the appeal must be allowed. Bankes LJ agreed subsequently with Avory LJ in the division court Atkin LJ however dealt a blow to the view advanced by the Earl of Reading CJ.[[90]](#footnote-89)

There was a suggestion in the above that although each of these facts in itself was insufficient yet the accumulation of them might make them sufficient……………..it may be that light may be thrown upon something which in itself in innocent and irrelevant by some other circumstances which though not itself conclusive may yet be illuminating, but apart from that it appears to me impossible when dealing with the question of corroboration that the accumulation of piece of evidence each of which by itself is not admissible as corroborative evidence can amount in whole to corroboration. Ex nihilo ni hil fit hat appears to me to be different from circumstantial evidence where evidence of independent facts each is itself insufficient to proof the main fact may yet either by their cumulative weight or still more by their connection one with the other as link in a chain prove the principal fact to be established. Prof. Cross (loc. cit) pointed out that Atkin LJ gives no reason for his discretion between potentially corroborative evidence and other circumstantial evidence but adds that it can justified by the fact that the former must be directed specifically to a material particular. One might add further that it must implicate the defendant in the matter complained of[[91]](#footnote-90).

All judges who participated in Thomas v Jones[[92]](#footnote-91) and who constituted the very powerful court were aware of the danger that the justice had before then what might have been no more than evidence of compassionate conduct on the part of the appellant and it was this feeling which ultimately prevailed. But in all probability as suggested by Prof. Cross and Hills (ante), a court considering the question of corroboration in a case involving more orthodox facts might well now leave the whole picture to the tribunal of facts as potential corroboration, if that picture seemed to implicate the defendant in a material particular and regard the question more as one of weight for the tribunal of fact.

**3.2.1.2:** **IDENTIFICATION CASES AND CORROBORATION**: cases which turn wholly or substantially upon evidence of visual identification have in recent times given rise to considerable anxiety. In the leading case of R v Turnbull[[93]](#footnote-92) Lord Windgery C.J in the course of laying down guideline of practice for leading with such cases held that where the quality of identifying evidence is poor, the trial judge should withdraw the case from the jury and direct acquittal unless there is other evidence which goes to support the correctness of the identification. Lord Windgery continued

This may be corroboration in the sense lawyer use that word, but it need not be so if it effect is to make the jury sure that there has been no mistaken identification[[94]](#footnote-93). The judge should point out to the jury evidence capable of corroborating the identification and also any evidence which the jury might mistakenly think to be so capable, for example the defendant’s decision not to give evidence. It is to be observed that Lord Chief Justice was not seeking to define a new area of corroboration and indeed he emphasized that his judgment was laying down not new rules of law but changes in practice[[95]](#footnote-94). It seems however that there is at least an indication that a quasicorroborative rule has developed which differs from the formal corroborative rule discussed about, in that:

1. There is no technical limitation on the nature of the evidence suitable for this purpose, so that it may be found in any evidence admissible in the case whether capable of amounting to corroboration or not;
2. The requirement arise only when the judge makes a value judgment of the quality of the evidence to be corroborated so that there is no general rule applicable to evidence of visual identification as such and ;
3. If, but only if the evidence is poor in quality, the judge should withdraw the case from the jury if it is uncorroborated.

The relationship of the so called Turnbull direction to the subject of corroboration was explored by the court of appeal in R v Chance[[96]](#footnote-95). In that case, on a charge of rape the only issue was whether the defendant was the person who committed the rape, although it was not formally admitted, there was in fact no dispute that the complainant had been raped by somebody. The trial judge gave an impeccable Turnbull direction to the jury but did not direct the jury that it would be dangerous to convict on the basis of the uncorroborated evidence of the complainant. The court of appeal held that in the circumstance of the case, this had not been necessary Roch J giving the judgment of the court of appeal pointed out that the inherent dangers of the evidence of a complainant in a sexual case could not be said to be present when the commission of that offence was not disputed the complainant could not be said to be giving evidence from fantasy, neurosis or remorse over consent. Indeed to insist on the usual warning would be to produce the result that where the rape was committed during another offence for example robbery. The warning would have to be given in regard to the rape case but not in regard to the robbery[[97]](#footnote-96). The court of appeal laid down the following guideline for future cases of sexual offences: 1) where the identification of the defendant as being present at the time of the alleged offence is not disputed, it is unnecessary for the judge to give a warning as to identification of evidence and then direct the jury that the defendant’s own evidence can supply the necessary corroboration. It is submitted however that in such a case, a corroboration warning will be required if the commission of the offence is disputed.

1. Where the commission of the offence by someone is not in issue (the instant case) a full corroboration warning is not needed unless there is some suggestion that the complainant’s evidence about the committed is somehow unreliable.
2. Where the identity of the offender is in issue, a Turnbull direction will suffice and no separate corroboration warning as to the sexual nature of the offence is called for unless the nature of the case casts further doubt on the identification of evidence.
3. Where the commission of the offence itself is in issue, the full corroboration warning must always be given.

#### 3.3.0: CORROBORATION UNDER THE COMMON LAW

The common law holds that in the absence of some specific rule to the contrary, the court can for any reason act upon the uncorroborated evidence of a single witness or document. This rule applies to both civil and criminal cases and regardless of whether the evidence in support of the case is agreed or disputed. It need hardly be emphasize that quite apart from any question of requirement any party is at liberty to adduce whatever evidence he sees fit by way of corroboration of other evidence in his favor subject to the rule of admissibility.

The common law rule which generally permit a court to convict or give judgment on the basis of a single uncorroborated witness or document is subject to two groups of exceptional cases and these two groups are quite distinct both in their nature and operation[[98]](#footnote-97). But they share the common justification that they seek to protect against the danger that certain kind of evidence may be too unreliable to act as the foundation for a save conviction or judgment in the absence of re-assurance provided by corroboration[[99]](#footnote-98). The two groups of exception comprise:

1. Cases where corroboration is required as a matter of law as a condition precedent to conviction or judgment. In these cases, certain kinds of evidence are required as a matter of law to be corroborated before any conviction or judgment may be based on them[[100]](#footnote-99). The requirement is provided for by the statute and is mandatory so that if there is no evidence capable of amounting to corroboration, the judge must withdraw the case from the jury or dismiss the claim as the case may be, a conviction or judgment obtain in breach of the requirement will be set aside on appeal.

1. Cases where corroboration is to be look for as a matter of practice. In these cases the common law does not permit a jury to convict on the basis of certain kind of uncorroborated evidence without warning itself of the danger of so doing. What is mandatory in this case is an appropriate warning conveyed by the judge to the jury in the course of summing up of the danger involve. The absence of such warning will be a ground for appeal and despite the use of the term “rule of practice” the requirement of warning is a rule of law and it is mandatory[[101]](#footnote-100). The important difference between these cases and the cases in which corroboration is a statutory requirement is the here, provided the jury are properly warned they may if they wish convict on the uncorroborated evidence in question and if they do so no appeal will rise for that reason[[102]](#footnote-101). A statute may provide for a mandatory requirement for corroboration as a condition precedent to conviction or judgment in any kind of case including criminal cases triable only summarily in the magistrate court (e.g. speeding) and civil cases (e.g. theft)*.* Itis also possible in such cases for an appellate court to determine whether the required corroborative evidence existed or not and to affirm or reverse the trial court accordingly. The rule of practice requiring corroboration warning is however important in practical term only in criminal cases tried on indictment and in relation to evidence given for the prosecution in such case. In such case there is a need to ensure that the jury understands the danger of convicting on the uncorroborated evidence of certain witness and its possibility for an appellate court to discern from the summing up whether an adequate warning has been given.

In summary, trials in magistrate court, it would be rarely possible to do this in the absence of a clearly erroneous statement in open court or in a written statement. In a civil action tried by a judge alone such a clearly erroneous statement would have to appear in the judgment and even in these cases, an appellate court would not intervene unless it were clear that the tribunal had simply not adverted to the danger at all.

It should be noted that corroboration is required under the English law only in few cases of which the following are the most important:

1. Identification of evidence of poor quality as held in the case of R v Turnbull122 [
2. Impersonation at election as provided for under Representation of the people Act123
3. Evidence as to the procuration of woman to have unlawful sexual intercourse as provided by

Sexual Offences Act124

1. [1977]QB 224,[1976]3 ALL ER 549 C.A
2. 1983 sec 168(5)
3. 1956 se 2-3, 22 and 23
4. [[103]](#footnote-102) Evidence as to the falsity of the statement (where that is relevant and not admitted by the accused)
5. In prosecution for perjury and kindred offences (Perjury Act125 ) and as held in the case of R v O’Connor[[104]](#footnote-103)
6. Opinion evidence as to speeding in a motor vehicle as provided by Road Traffic Regulation Act[[105]](#footnote-104).

The obvious unreliability of a single witness estimate of the speed of a car and the undesirability of prosecution brought perhaps solely on the evidence of an offended house holder or pedestrian who happened to see the number of a speeding car justifies the need for corroboration of the evidence when there is in fact reliable evidence available, the court are inclined to take a generous view of the corroboration requirement.

#### 3.4.0: CONCLUSION

The origin of corroboration in Nigerian which could be traced first to the wisdom and common sense found among our fore father in the primitive African society then the received laws and our own evidence act, the meaning of corroboration which has been simply has a supporting or reinforcing testimony and before it would be accepted as such it must possess some qualities regarded as it nature. Corroboration under the common law, the evidence act and the various evidence and testimonies requiring corroboration has been discussed in this chapter.

**CHAPTER 4**

### INCIDENCES OF CORROBORATION

#### 4.0.0: INTRODUCTION

This chapter is dedicated to the analysis of the requirement of corroboration in civil and criminal cases, the role of judges and jury in corroboration matter and the identified problems of corroboration with the proffered solutions to the problems. This chapter shall also have a conclusion.

#### 4.1.0: CORROBORATION IN CIVIL CASES

The question of corroboration in civil cases generally is of less significance than in criminal matters because of the greater likelihood of a judge directing his mind correctly to the inherent dangers of certain kinds of evidence. In matrimonial cases, the approach to such cases dating from the Divorce Reform Act.128 By this Act contested cases are discouraged which greatly diminished the importance of a number of evidential matters of which corroboration is one. There remain however a residual rule applicable alike to proceedings in the high courts and the

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magistrate court in the matrimonial jurisdiction and it’s extent was for modern purpose, defined by Division Court in Alli V Alli.[[106]](#footnote-105) The principle may be stated as follows

1. In considering any alleged matrimonial offence, the court should, as a matter of practice, look for corroboration of the evidence of the complainant and should normally required it if available on the fact of the case. This applies not only to allegation of sexual misconduct but to matrimonial offences generally.
2. Where an appellate court may always interfere with a finding, if it appears clearly that the court of trial has proceeded, oblivious of the dangers of uncorroborated evidence, the court will intervene on appeal in cases where sexual misconduct is alleged or where evidence of adultery is that of a willing participant, unless the court of trial has warned itself expressly. In any such case, it is of course open to the court of trial after a proper warning to act on the uncorroborated evidence of the complainant and in Alli’s case above, the decision of the justice to do so was upheld on the facts. There is nonetheless, in the decision of the Division Court, an oblivious equation of sexual allegation and evidence of willing participant with the analogue cases of complainant and accomplice in criminal cases.

Another area of corroboration requirement in a civil case is where a claim is made on the deceased’s estate as held in Hill v Wilson.[[107]](#footnote-106) Similarly where rape is alleged in a civil case the corroboration warning requirement is the same as far as a criminal case. It is difficult to think of a corroboration warning in a civil case since they are always invariably tried without a jury, the [[108]](#footnote-107)rule perhaps is to say that the court will normally require corroboration, though it is entitled to reach a conclusion without it.

The breach of the promise of marriage is another issue in a civil case that calls for corroboration. The only exception contained in the act relating to an action for breach of promise marriage is section 176 which provide as follows “No plaintiff in any action for breach of promise of marriage can recover a verdict unless his or her testimony is corroborated by some other material evidence in support of such promise”. This provision is similar to that of the English evidence (further amendment) act131 under which it has been held that the defendant’s consent reference to the plaintiff as his fiancée, sometimes before the alleged engagement was a sufficient corroboration. It is important to note that there is no statutory provision requiring that corroboration is necessary for the proof of any of the matrimonial offences, the courts have however developed the following rules regarding corroboration in matrimonial offences.[[109]](#footnote-108)

Where the alleged matrimonial offence is either adultery or cruelty, then no corroboration is required, although it is advisable to have it.[[110]](#footnote-109) In practice, the courts are reluctant to grant a petition based on either of these offences on the mere evidence of the petitioner unless such evidence of the petitioner is very strong and convincing. In Olufela Sowande v Mildred Sowande,134 DICKSON J summarized the position as follows “of course, it is quiet plain that a court will not necessarily refrain from pronouncing a decree simply because the evidence is uncorroborated” but the court would hesitate before granting a divorce on the sole and unsupported testimony of a petitioner. The need for corroboration is greater in an undefended case than in a defended one.135 In a proper case the court will act on the uncorroborated testimony of the petitioner. For instance in Josephine Aduke Oshinloye v Folorunsho Adewale Oshinloye,136 Dickson J held that in the case of cruelty it is the practice of the court to require corroboration and not a rule of law and it has never been decided that the court is not entitled in a proper case where it is not in doubt where the truth lies, to act upon the uncorroborated testimony of the petitioner.

Divorce is more easily granted on the unsupported testimony of a petitioner in a defended case than in an undefended one. This is because in undefended case the possibility of collusion is greater than in defended one.137

#### 4.2.0: CORROBORATION IN CRIMINAL CASES

Quite apart from the specific statutory provision of sections of the Sexual Offences Act138 which

required corroboration as a matter of law, the jury should as a matter of practice look for

1. 1960 L.L.R 88
2. Ibid pg 347
3. 1960 L.L.R 18

137

Ibid

corroboration[[111]](#footnote-110) of the evidence of the complainant in any case of sexual offence and they must be given a warning accordingly[[112]](#footnote-111). The complainant for present purpose is the victim of the offence although the terminology suggests hostile action by the defendant, this is not necessarily the case and in certain offences. For instance, incest or buggery, the victim may be a willing participant in the act charged in such a case, the victim’s evidence may well fall within the accomplice rule.

In any evidence, however the rule respecting complainant is distinct from that concerning accomplice and founded upon different consideration.[[113]](#footnote-112) The justification for the rule is the inherent dangers arising from the fact that sexual allegations are simple and often tempting to make, but difficult to refute and from the characteristic possibility of hysterical or malicious invention or simply the instinct for preservation of the complainant’s reputation or material interest as to the position in the case of a child complainant.

The rule requiring corroboration of the evidence of complainant in sexual cases developed somewhat inflexibly and has been held to apply to all sexual offences regardless of the age or sex of the complainant and the nature of the issue in the case.[[114]](#footnote-113) It applies even where the evidence of the complainant has no or only marginal significance in implicating the defendant in the commission of the offence. Thus, in R v Midwinter[[115]](#footnote-114) the omission of a corroboration warning was held to be fatal to the conviction even though the complainant had not identified the defendant and the case turned solely on a confession alleged to have been made by the defendant. Summarily, in R v Marks[[116]](#footnote-115) the absence of a warning was similarly fatal to a conviction for unlawful sexual intercourse with a girl under 16, where the only issue was the age of the complainant at the material time. Such inflexibility produces a marked degree of artificiality, because in many cases, the supposed inherent dangers in the evidence of the complainant have no possible application to the case as in a case where there is no dispute that the complainant was raped by somebody. But the issue is whether the defendant was the man who raped her. In such a case, a direction to the jury on the dangers of evidence of visual identification is obviously appropriate.

However a corroboration warning emphazing the unreliability of evidence of complainant because of the dangers of invention, fantasy, remorse after giving consent and the like are, just as obviously, in appropriate.[[117]](#footnote-116) The rule has now been mitigated to some extent by the decision of the court of Appeal in R v Chance145 where it was held that in some such cases as inappropriate corroboration, warning is no longer required in R v Sander.146

Curiously, it has been held that the evidence of the complainant of a sexual offence does not required corroboration if it is admitted under the similar fact principle in a trial concerning another offence, even though corroboration is required of the complainant evidence of the offence charged.147 It is submitted that this decision which conflict the rule. In the analogous cases involving accomplice, it is difficult to justify and should be reversed. The danger in a case where similar fact evidence consists of as yet unproved allegation must surely be considerable. There is no doubt that the two complainants are capable of corroborating each other in such a case. In R v Longstaff, 148 the question was left open by the court of Appeal whether a police officer to who indecent overturns were made in a public lavatory was “the complainant” on a resulting charge of attempt indecency. It seems probably by analogy, with the authority on police officer alleged to be accomplice that the answer should be in the negative. Certainly if the officer was acting in his professional capacity the rationale of the rule would be absent.

#### 4.3.0: ROLE OF JUDGES AND JURY IN CORROBORATION

The assessment of corroboration falls into two parts, which are respectively a question of law and a question of fact. Whether evidence is capable in law of constituting corroboration is a

1. (1988) Q B 92
2. (1961) 46 cr APPR 60
3. Ibid pg 531
4. [1977] Crim LR 216

question of law for the judge.[[118]](#footnote-117) In deciding the question, the judge must consider whether the evidence said to be capable of corroboration fulfils the requirement. Based on his conclusion, the judge must then either withdraw the case from the jury if corroboration is required as a matter of law and non is available, or give the jury the necessary warning if the jury are required to look for corroboration as a matter of practice. The judge’s direction must include appropriate guidance on what part of the available evidence the jury are entitled to regard as corroborative or if it be the case that there is /no such evidence then there is a real possibility that the jury might be confused by a direction couched in technical legal term and the judge should state the requirement using everyday language.[[119]](#footnote-118)

The role of the judge in the assessment of corroboration is basically to give the corroboration warning to the jury. Similarly, the essence of the corroboration warning must be that it is dangerous to convict in the absence of corroboration for the evidence of the witness concerned. This is coupled with an explanation of the reason why it is dangerous to convict on an uncorroborated evidence, since the jury will not act for any purpose including corroboration on evidence which the court reject[[120]](#footnote-119). In R v Spencer,[[121]](#footnote-120) Lord Ackner expanded on the nature of the warning or assessment of which the judge or jury is expected to make. According to him:

 *……………..When there is no corroboration, the rule of practice merely require that the jury should be warned of the danger of relying on the sole evidence of an accomplice or of the complainant in a sexual case …………..The warning to be sufficient must explain why it is dangerous so to act, since otherwise the warning will lack significance.*

The jury is of course told that, while as a general rule it is dangerous so to act, they are at liberty to do so if they feel sure that the uncorroborated witness is telling the truth. However, where there is evidence before the jury which they can properly considered to be corroborative evidence,[[122]](#footnote-121) in the same vein the trial judge then has the added obligation of identifying such material and explained to the jury that it is for them to decide whether to treat such evidence as corroboration. They should further warn themselves against treating potential corroborative evidence that which may appear to them to be so but which is not so in law. E.g. evidence of a recent complainant in a sexual offence.[[123]](#footnote-122)Moreover, where the prosecution is relying on lies alleged to have been told by the accused, a particular direction is needed. A special direction is also often needed where evidence of the complaint’s distress is relied on by the prosecution in sexual cases as potentially corroborative material. Similarly, the jury has further the additional obligation of directing the jury that accomplice who are parties to the same charge cannot corroborate each other.[[124]](#footnote-123)

It is paramount to observe that judge and jury have separate functions as to corroboration. The judge may and sometimes must indicate the need for or desirability for corroboration and he may tell the jury that a particular piece of evidence can or cannot in law amount to corroboration. If he is wrong on that he may be reversed, if he invaded the jury’s province and tell them that a particular piece of evidence is corroborative, but this is for them to decide.

#### 4.4.0: PROBLEMS OF CORROBORATION

Corroboration as a rule under the law of evidence is not totally devoid of shortcomings which have been as the problems confronting application.[[125]](#footnote-124) The assaults on the corroboration rules occurred not because supportive evidence was undesirable; rather it was because of the arbitrary and anomalous nature of the groups of witness and categories of evidence affected by it as well as the inflexibility and complexity of the rule itself.

1. Corroboration was never simply put to the jury as “supportive evidence” the common law requires that it verified a material particular of the testimony in need of corroboration and that it implicate the defendant. This was laid down in R v Baskerville where Lord Reading said that

corroborative evidence is *……evidence which confirms in some material particular not only the evidence that the crime has been but also that the prisoner committed it .* thus in a rape, medical evidence confirming that the victim had had sex at the time of the alleged rape would not corroborate her testimony alleging rape because it does not confirm the identity of the man involved.

1. Corroborative evidence has to be relevant, admissible, credible and independent. This latter factor is an essential criterion for assessing the probative worth of any corroborating evidence. The evidence should emanate from a source other than the original witness. Thus, under the corroboration rule the evidence could not be for example a recent complaint of a victim in a sexual assault case, although the visible distress of the victim independently observed might be. Similarly, other prior consistent statement or contemporary note admitted for the purpose of refreshing the memory could not be seen as corroboration. Explaining such technicalities to the jury was never a simple task.
2. Equally complex was the rule that the testimony of a witness who requires corroboration could not itself supply corroboration so that if there were a defendant and two accomplices involved in the same offence, the accomplice could not corroborate each other.
3. Where there were several piece of potentially corroborative evidence but the corroborative value of any single piece might be nil, the jury could be directed that the cumulative effect might be seen as constituting corroboration.

Corroboration rules appear to embody substantial safeguard, but a confused jury rarely come to a just result. In R v Hester Lord Diplock observe that “………….complicated formulae about the concept of corroboration and the respective functions of judges and jury are unintelligible to the ordinary lay man ” the law commission summarized the problems and the complexities facing corroboration*[[126]](#footnote-125)*and it put it thus:

*“The complexity not only is the cause of unnecessary difficulties at trials but can also be positively detrimental to justice. The rule as to what evidence can and cannot count as corroboration are difficult and complex and the cause of many actual or allege error and of many appeals, the danger of injustice is increased by the irrational terms of the required direction itself”*

The judge is oblige to start by saying that it is dangerous to convict on the basis of certain evidence but then to go on and tell the jury that it is possible for them to do exactly that, these formulae can lead according to the circumstances of the case, either to the placing of an unfair handicap on the prosecution or confusion that may be positively detrimental to the accused. The rule requiring the jury to be given a complicated and technical discourse about the evidence to be corroborated may have the contrary effect (on the jury) to a sensible warning couched in ordinary language directed to the facts of the particular case.

#### 4.5.0: SOLUTIONS TO THE PROBLEM

The need for corroboration or for corroboration warning is now minimal. The question exist as to whether the judge will seek to fill this vacuum by developing corroboration warning as a matter of practice in those area formerly covered by the rule?. The answer appear to be that although warning about the reliability of certain witness will continue to be given, such warning will be couched in non-technical terms will not mention corroboration nor necessarily refer to the need corroborative evidence. In R v Makanjuola[[127]](#footnote-126) the defendant was convicted of an indecent assault on a young female fellow worker. On appeal it was argued that the trial judge should in his discretion have given a full direction in accordance with established corroboration rules regardless of Section 32 of the Criminal Justice and Public Order Act.159 The appellant suggested that the rationale for the old common law was that no complainant in sexual offences may lie or fantasize for unascertainable reasons or for no reason at that. This rationale had not evaporated over night and the traditional warning should continue. If that were right parliament would have enacted Section 32 in vain, practice would have continue unchanged, it is clear that the judge does have a discretion to warn the jury if he thinks it is necessary, but the use of the word “merely” in the subsection shows that parliament does not envisage such a warning being given just because a witness complains of a sexual offence or is an alleged accomplice.

It was further submitted that, if the judge does decide a warning is necessary, he should give the jury full old-style direction on corroboration. That mere using the phrase “Dangerous to convict on uncorroborated evidence” explaining the meaning of corroboration , identifying what evidence under the old rule is capable of being corroborated , what evidence is not so capable and the respective roles of the jury and judge in this bipartite quest………………………..it

159 1994

was in our judgment, partly to escape from this tortuous exercise which juries must have found more bewildering than illuminating that parliament enacted Section 32 given that the requirement of a corroboration is abrogated in the term of section32(1), we have beeen invited to give guidance as to the circumstances in which as a matter of discretion a judge ought in summing up to a jury to urge caution in regard to particular witness and the terms in which that should be done. The circumstances and evidence in criminal cases are infinitely variable and it is impossible to categories how a judge should deal with them but it is clear that to carry on giving “discretionary” warnings. Generally and in the same term as where previously obligatory will be contrary to the policy and purpose the 1994 Act whether as a matter of discretion a judge should give any warning and if so it’s strength and terms must depend upon the contents and manner of the witnesses evidence, then circumstances of the case and the issues raised. The judge will often consider that no special warning is required at all. Where however the witness has been shown to be unreliable he or she may consider it necessary to urge caution. In a more extreme case if the witness is shown to have lied, to have made previous false complains or to bear the defendants some grudge a stronger warning maybe thought appropriate and the judge may suggest it would be wise to look for some corroborating materials before acting on the impugned witness’ evidence.

The above illustrations are just some of the factors a judge may take into account in measuring where a witness stands in the scale of reliability and what response they should make at that level in their direction to the jury. It is stressed that judges are required to conform to any formular and the court would be slow to interfere with the exercise of discretion by a trial judge who has the advantage of assessing the manner of a witness’ evidence as well as its content. In summary, the identified solutions to the problems of corroborations can be summarized into the following points:

1. Sections 32(1) abrogates the requirement to give corroboration direction in respect of an alleged accomplice or a complaint of a sexual offence simply because the witness falls into one of those categories.
2. It is a matter for the judge’s discretion what, if any warning he considers appropriate in respect of such a witness as indeed in respect of any other witness in whatever type of case. Whether he chooses to give a warning and in what terms will depend on the circumstance of the case the issue raised and the content and quality of the witness’ evidence.
3. In some cases it may be appropriate for the judge to warn the jury to exercise caution before acting upon the uncorroborated evidence of the witness, this will not be so simply because the witness is a complaint of a sexual offence nor will it necessarily be so because a witness is alleged to been accomplice. There will be needed to be an evidential basis for suggesting that the evidence of the witness maybe unreliable. An evidential basis does not include mere suggestion by cross examination counsel.
4. If any question arises as to whether the judge should give a special warning in respect of a witness, it is desirable that the resolved by discussion with the counsel in the absence of the jury before the final speeches.
5. Where a judge does decide to give some warning in respect of a witness, it will be appropriate to do so as part of the judge’s review of the evidence and his comment as to how the jury should evaluate it rather than as a set-piece legal direction.
6. Where some warning is required, it will be for the judge to decide the strenght and terms of the warning. It does not have to be invested with the whole florid regime of the old corroboration rules.
7. ……………..attempt to re-impose the straight jacket of the old corroboration rules are strongly to be depreciated
8. Finally, this court is declined to interfere with a trial judge’s exercise of his discretion save in a case where that exercise is unreasonable.

The decision of the court in Makanjuola’s case[[128]](#footnote-127) is essentially to the effect that the old-style of corroboration will be restricted to those situation that requires it and rejects the notion that corroboration warning which were before 1994, a matter of law should now routinely become a matter of practice. To summarize the current position of the law on corroboration warning as laid down in the case discuss, above we have the following point:

1. Corroboration evidence is still required under certain statute.
2. Corroboration as a matter of law and will only be given very rarely as a matter of practice.
3. Where there is an evidence basis showing that any witness in whatever sort of case may be unreliable, the trial judge in his /her discretion may warn the judge this will not be in terms of corroboration but may be a simple caution or may in certain cases be expressed in stronger terms. The judge may suggest that the jury would be wise to look for some corroborating evidence (i.e. materiality) such material might well emanate from the source requiring support for example a rape victim’s credibility might well be bolstered by her prompt complaint. Although such a complaint is admissible evidence under the corroboration rule, did not amount to corroboration as under the rigid interpretation of Baskerville it was not independent.

If the above court of appeal decision in Makanjuola’s cases is accepted, the problems surrounding corroboration should be in the past. Even those current warnings “as a matter of practice” are likely to be no longer phase in terms of corroboration but subsumed with in such general warning to be given The decision mentions some of the factors (where the witness hold a grudge or can be shown to have lied previously) affecting reliability but those relate to the individual weakness. There remains categories of evidence such as identification of evidence and confession, where there is an obvious need for corroboration material, the possibility that a conviction can be based on an uncorroborated confession remains.

Furthermore, although, the dismantling of corroboration rule is welcome, but it should be emphasized that convictions which are based wholly or mainly on evidence from a single source will normally remain questionable. The “single source” was not a factor mentioned by the court of appeal in Makanjuola’s case as a reason for a warning to the jury. This was possible because this might be construed as an invitation to trial judge to re-introduce the “sexual complaint” rule by the back door since all too often such offences rely wholly or mainly on the evidence of the victim.

#### 4.6.0 CONCLUSION

Corroboration is a necessity both in civil and criminal cases; this chapter has done justice to the requirement of corroboration under both instances. Also the problems facing the principle of corroboration and the identified solutions including the roles of judge and jury on corroboration issues has been examined.

**CHAPTER 5**

### CONCLUSION AND RECOMMENDATION

#### 5.0.0: CONCLUSION

Any proceeding before the court would either be civil or criminal, in both instances the issue of corroboration cannot be excluded if the judge aims at achieving justice. Thus the requirement of corroboration at both instances has been critically examined. This work has also been able to trace the history of corroboration in Nigeria to the primitive traditional society, the role of judges and jury in corroboration issues, the meaning of corroboration at common law and as defined by other scholars and learned.

The requirement of corroboration of evidence is becoming more pressing and complicated in our society today as the society progresses in wisdom and technological advancement. A judge’s discretion in identifying a corroborating evidence where there are more than one evidence and the danger of taking decision or convicting upon the uncorroborated witness or evidence of an accused has also been discussed at length. Corroboration itself is not free from problems and ambiguities; the work has identified the existing problems and ambiguities and stated proffered solution to problems of the concept. It should be noted that it is not all evidence that requires corroboration, this work has therefore stated in clear term and language those kind of evidence requiring evidence and also itemized and give proper elucidation on the various types of corroboration existing under our legal system. Corroboration requirement by the judges could either be mandatory or obligatory, where they are required to seek corroboration as a matter of law then it is mandatory upon them to do so and failure to comply has the effect of getting their decision quashed. There are also instances where the judges are just obliged to seek corroboration as a matter of practice, failure to comply may not necessarily have a quashing effect on their decision, but it could have a repealing effect on same.

##### 5.1.0 RECOMMENDATION

This work as achieved it aim which is to give a critical analysis of the concept of corroboration under the Nigerian legal system. Also the focus of sheding brighter light on the concept has equally been achieved through the examination of the rules, principles, forms and incidences of corroboration at different point of each chapter of this work. Consequent upon the study and analysis of the concept, it has been observed that:

1) Corroboration itself can be said to be double or two edged sword in that it strict requirement and application in some cases may lead to an “inevitable injustice” while it loose requirement and application may allow justice to slip through the fingers of the law. It is therefore recommended that the discretion of the judges after a proper and clear warning should be allow prevailing in the issue of corroboration in any case be it civil or criminal.

2 ) Every good law should be dynamic and be bendable to suite any arising situation in the society thus, the opinion of the judges on the issue or the fact of the case before them should be a yard to determine basis of corroboration in case rather than being hooked in claws of technicality or statutory purview.

1. It is an undisputable fact that some cases are crystal clear, even the blind on hearing then facts and surrounding circumstances could decide it without any recourse to statutory or conventional guideline, such cases should to frustrated or turn into meaningless quest all in the name of corroboration requirement even when the presence of corroboration will have no effect

on it.

1. Finally, though the requirement of corroboration is a sure way to justice in any given case but considerable care should be take so what is meant to make justice will not end up marring it.

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