THE LAW RELATING TO CORROBORATION IN ZAMBIA WITH SPECIFIC REFERENCE TO THE TESTIMONY OF ACCOMPLICE WITNESSES.

BY

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DEDICATION

TO MY LOVING PARENTS MR DAVID MWEWA AND MRS NELLIE CHISENGA, FOR ALL THEIR PATIENCE AND ENDURANCE

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I wish to, however, make it clear that the responsibility for this work lies squarely on me and that all the consequences therefrom would be entirely mine.

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CHAPTER I

INTRODUCTION

Corroboration has been defined as "evidence tending to confirm some fact of which other evidence is given"[1]. The general rule is that the court is not precluded from acting or convicting on the testimony of a single witness. This, however, can only be so if there is no statute or special rule of practice which calls for corroboration of such evidence. Such testimony of a single witness is a sufficient basis for a decision in a criminal or civil case so long it is credible. It is, however, not a rule that the court must believe whatever the uncorroborated, unimpeached and uncontradicted witness says. It is possible that the court can accept part of the evidence of such a witness and reject part of it. To this effect corroboration may be necessary in certain cases and unnecessary in others.

In some cases corroboration is required as a matter of law or practice. Where the rule requiring corroboration is statutory it is a rule of law and the judge must acquit in the absence of corroboration. In Zambia, the penal code[2] specifies the offences for which a person cannot be convicted unless the evidence of one witness is corroborated by some other evidence. As a matter of law, corroboration is required mainly in criminal cases. Under the penal code a person charged with treason[3] cannot be convicted on the testimony of one witness. The section requires at least two witnesses to testify and corroborate one another. The penal code[4] further prohibits the conviction of any person under section 57 on the uncorroborated testimony of one witness. Section 57 deals with offences in respect of seditious practices. On a charge of perjury[5] or of subornation of perjury, the evidence of one witness shall not suffice to secure a conviction thereon. The Juvenile Act[6] requires

that the evidence of an unsworn child not given on oarth should be corroborated by some other evidence where such child gives evidence on behalf of the prosecution. A conviction cannot stand in the absence of such corroborating evidence. The Penal Code[7] and the roads and road traffic act[8] also prohibit the conviction of any person on charges of procuration and exceeding the speed limit respectively solely on the evidence of a single witness. In civil cases corroboration is required as a matter of law in affiliation proceedings only.

Corroboration is required as a matter of practice in sexual offences[9], sworn evidence of children[10], matrimonial offences[11], claims against estates of deceased persons[12], and where accomplice witness testify on behalf of the prosecution[13]. In sexual offences it is considered not safe to convict on the uncorroborated evidence of the complainant although the court may do so if it is satisfied of the truth, whereas in cases of sworn evidence of children the court need only warn itself of the dangers of acting on the uncorroborated evidence of young boys and girls.

Accomplice evidence, which is the main focus of this essay, need not be corroborated as a matter of law, but as a matter of practice. It has long been recognised and accepted since the ninenteenth century, that there is no rule of law which requires the testimony of an accomplice witness to be corroborated or confirmed. It was, however, customary or practical for the court to warn itself against the dangers of acting on the uncorroborated testimony of an accomplice. The failure to give the necessary warning was no ground for invalidating a decision. This in essence mean't that the Court could convict on the unconfirmed evidence of an accomplice.

However, in recent times the courts have insisted that the rule as to warning has virtually become equivalent to a rule of law. The result now is that if the judge gives the proper warning he can convict on such evidence as before even if there is no corroborating evidence. The court will not quash a decision merely on the ground that there was no corroboration although it may do so if it thinks the decision unreasonable or unsupported by evidence. Where, however, the judge fails to warn himself of the danger of acting on uncorroborated evidence of an accomplice the court is bound to set aside the conviction unless it is able to find that there was in fact substantial corroboration.

In Zambia the law relating to corroboration where accomplices testify on behalf of the prosecution has seen two major developments. In 1972[14] the Supreme Court of Zambia decided that the evidence of an accomplice witness need not be corroborated as a matter of law. But an accused person can only be convicted on the uncorroborated testimony of an accomplice where there are special and compelling circumstances. Later in 1978[15], the Supreme Court again re-affirmed the decision of 1972 and attempted to explain what they they had mean't by special and compelling circumstances in the earlier case. In view of the above developments what remains to be seen is whether the introduction of the special and circumstances rule can operate to render a conviction on the uncorroborated testimony of an accomplice safe. It has also yet to be seen as to what constitutes special and compelling circumstances and whether the rule is in fact a departure from settled English Law. The essay will be divided into five chapters.

Chapter I will consist of the introduction. Chapter II looks at the definition of corroboration, what amounts to

corroborative evidence and the forms and nature of corroborativeevidence. It also looks at the reasons for and against a general corroboration rule. Chapter III will deal with the testimony of an accomplice, beginning by looking at who an accomplice is and the need for corroborating accomplice evidence. It also looks at the position of the law in Zambia prior to 1973. Chapter IV examines the law on corroboration of accomplice witness today and looks at what constitutes special and compelling circumstances. Here the author looks also at the position of law in the United Kingdom. chapter V carries the summary and proposals for reform.

FOOTNOTES

1. Heydon, J.D, Cases and Materials on Evidence, (London: Butterworth, 1975), P67.
2. Chapter 145 of the Laws of Zambia.
3. Ibid, S.47
4. Ibid, S.59
5. Ibid, S.104
6. Section 122, Chapter 217 of the Laws of Zambia.
7. Ibid, S.40
8. Section 192(4), Chapter 766 of the Laws of Zambia.
9. Mwelwa V the people [1972] ZR 29
10. Chisha V the people [1980] ZR 36
11. Heydon, (1975) O P CIT, P67.
12. Cross, R, Cross On Evidence, 5th ed (London: Butterworth, 1979), P205
13. Ibid, P196
14. Machobane V the people [1972] ZR 101
15. Phiri and others V the people [1978] ZR 79.

CHAPTER II

WHAT IS CORROBORATION?

Corroboration is "evidence other than that of the witness or some other person whose evidence also requires to be corroborated which tends to show that the evidence of the witness is true"[1]. Corroboration then is anything that confirms the existence of a fact in issue. It may consist of express or implied admissions which are made by the accused. Dealing with the question of corroboration, Lord Reading L.C.J. said:

> "We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. It must be evidence which implicates him i.e. which confirms in some material particular not only that the crime has been committed, but also that the prisoner committed it".[2]

Corroboration need not be direct evidence as it may well be circumstantial. The corroborative evidence must proceed from an independent source because a witness is not able to corroborate one self. In other words for the evidence to amount to corroboration it must be extraneous to the witness who is to be corroborated. In R v Whitehead[3] it was said that a girl cannot corroborate herself, otherwise it is only necessary for her to repeat her story twenty-five times in order to get twenty five corroborations. Corroboration therefore, must be distinguished from consistency. A persons testimony cannot be corroborated merely by having various other people narrate what had been told to them by the person whose testimony requires to be corroborated. The truth of

a statement cannot be corroborated by saying that it was made before because repetition is not corroboration.

It is not enough that a piece of evidence should tend to confirm the truth of any part of the testimony to be corroborated. The piece of evidence must confirm that part of the testimony which suggests that the crime was committed by the accused. If a witness says, "The accused and I stole the sheep and I put the skins in a certain place, the discovery of the skins in that place does not corroborate the witness' evidence as against the accused; but if the skins were found in the accused's house, this would corroborate because it tends to confirm the statement that the accused had some hand to play in the theft"[4]. Evidence which amounts to corroboration must be evidence from which an inference can be made that the main fact happened. Corroboration may be on some or all material facts.

THE NEED FOR CORROBORATIVE EVIDENCE:

Several reasons have been advanced for and against a general corroboration rule. First, it is said that the general corroboration rule protects the innocent because "it is hard for two or more witnesses to agree upon all circumstances relating unto a lie, as not to thwart one another"[5]. This is particularly the case where the lies are detailed and the witnesses who tell them are skilfully cross-examined. The argument here in favour of the general corroboration rule is that two people might decide to tell the same lie in court against the accused. Although they might tell such a lie it is difficult that they will agree on all the details especially where they are cross-examined. During cross-examination, it might turn out that the two witnesses concocted their story due to discrepancies which may be found in their testimony. If such a situation occurs then it means that a man who is innocent will be safe because no conviction can

be based upon such evidence.

On the other hand, this rule when closely examined, causes more hardships than benefits. It will first and foremost lead to many crimes going unpunished, and in fact encourage crimes to be committed by persons who are aware of the difficulties of a conviction. Secondly, a general corroboration rule tends to increase the likelihood of perjury and subornation of perjury on the part of the litigants attempting to comply with it. To this effect it has been submitted that the consequence of this is a decline in public respect for the entire legal system[6].

A second justification for a general corroboration rule was that which was advanced by Montesquieu. According to Montesquieu "reason requires two witnesses, because a witness who affirms and a party who denies, make assertion against assertion, and it requires a third to turn the scale"[7]. The contention of Montesquieu is to the effect that in Court you have two parties, the accused and the witness. The witness is saying that the accused did commit the crime in issue while the accused is denying the whole thing. In order to find out who is telling the truth the Court has to look for the testimony of another witness to either corroborate the other witness or the accused. But this has been objected to as being only a "Mechanical method of obtaining security unrelated to the real forms and causes of unreliable testimony"[18]. It is not easy to form any just conclusion from numbers. It is said that sometimes a single witness, by the simplicity and clearness of his narrative, by the probability and consistency of the incidents he relates, by their agreement with other matters of fact too notorious to stand in need of testimony, will be enough to stamp conviction on the most reluctant mind[9], A plurality of witnesses in certain instances though all were to the same fact may be found wanting in the balance. The balance of opposed witness

which supposedly has to be to be broken by an extra witness does not in fact generally exist. The accused has nothing to lose by lying in a criminal case, but gain. A prosecution witness on the other hand has much to lose and nothing to gain by lying. If Montesquieu's argument is to be accepted then it will mean that the defence should always provide a plurarity of witnesses.

The third justification for a general corroboration rule is that it "prevents a man of honour from being destroyed by the assertion of one rogue"[10]. The right to undermine a rogue's credibility by attacking his character affords some solution to an honourable man accused of the crime. This justification has been countered by saying that sometimes rogues tell the truth and honourable men sometimes commit crimes. As is said, one honourable man could not prove a single rascal guilty though two rascals could prove a honourable man guilty[11].

We may concede the occasional dangers of trusting a single witness, but a general corroboration rule requiring two witnesses is not itself sufficient to overcome the dangers and disadvantages which are thereby introduced. It is true that there may be some safety in a multitude of witnesses but nothing more. Witnesses should be judged by the weight of their evidence and no more. Montesquieu's contention was that the laws which cause a man to perish upon the testimony of a single witness are fatal to liberty. Montesquieu presupposed that there was equality between the denial of the accused and the testimony of the witness. Reacting to this, Evans wrote:

"The supposed equality between the denial of the accused and the testimony of the witness is merely fanciful, unless it can be said that there is an equal inducement to make a

false accusation for the purpose of destroying an individual with whom there is no previous animosity, and to deny the commission of a crime for which a party is justly liable to undergo punishment,- between a person who by his falsehood has everything to lose and nothing to gain, and one who has everything to gain and nothing to lose"[12].

Those who favour the general corroboration rule contend that it is dangerous to allow a court to act on the testimony of a Single witness, the main contention being that even the most vile can swear away the liberty, honour or even the life of anyone else. They insist that the likelihood of a difference between the statements of two false witnesses when examined apart, is a powerful protection of the accused. in most cases it must be accepted that a greater injustice may be done by giving credence to the story of a Single witness. Such a rule, it is said[13], may be desirable In a society where the standard of truth is low.

But on the other hand, it can be said that the anomaly of acting on the testimony of one person is more apparent than real, because decisions do not proceed merely on the story told by the witness, but proceed on the moral conviction of its truth which truth is based on the way the witness gave his testimony. It is true that cases occur where the greatest injustice is done by giving credence to the story of one witness. Despite that, however, the general corroboration rule requirement should not be used in the absence of strong and just reasons because it clearly imposes an obstacle to the administration of justice. The disadvantages of requiring a single witness to be corroborated are threefold. First, it offers an incentive to crime and dishonesty by seemingly telling the offender that he may with impunity, do any unlawful act in the presence of one witness. Secondly, the artificial rules of this kind also hold out a temptation

to the subornation of perjury, in order to obtain the means of complying with them. Thirdly, they produce a mischievous effect on the court by their natural tendency to react on the human mind, and thus create a system of mechanical decisions dependent on the number of proofs and regardless of the weight. This can hardly be so. As Wigmore says:

> "The probative value of a witness' assertion is utterly incapable of being measured by arithmetic. All the considerations which operate to descredit testimony affect it in such varying ways for different witnesses that the net trust worthiness of each one's testimony is not to be estimated, either in itself, or in reference to other's testimony, by any uniform numerical standard. Probative effects are too elusive and intangible for that. The personal element behind the assertion is the vital one, and is too multifarious to be measured by rule"[14].

To this effect judicial decisions should proceed on the intelligence and credit, and not on the number of the witnesses examined in court. The Common Law lays down four general principles[15].

(1) Credibility does not depend on the number of witnesses.
(2) Generally the testimony of one witness is enough.
(3) Mere assertion of any witness does not of itself need to be believed even though he is unimpeached in any manner.
(4) All the rules requiring two witnesses or corroboration of one witness are exceptions to the general rule.

NATURE AND FORMS OF CORROBORATIVE EVIDENCE:

Corroborative evidence may take several forms. In certain cases the conduct of the accused or defendant may be held to

amount to corroboration of the evidence against him. But it is also possible that the conduct of the accused may not be held to be corroboration against him. Corroborative evidence against the defendant may take the form of silence in the face of an accusation, non-denial of an offence when formally charged, lies in and outside court, and the conduct of the accused on previous occasions to that with which the trial is concerned. It is important that we consider these elements one by one.

SILENCE

Silence in the face of an accusation may not amount to corroboration. If someone is confronted by a Police Officer who puts questions to him, silence will not amount to corroboration. This is because citizens are not under an obligation to answer questions from the Police. But silence may amount to an implied admission if it is natural to expect a reply from the person accused. The failure of a man who is accused of a crime, to make any answer or to show any indignation may be corroboration, but whether it is corroboration or not depends on the circumstances of each case. It is for the Judge to decide whether a respectable man, if he was innocent would make an answer to such a charge. But when persons are speaking on even or equal terms, and a charge is made, and the person charged says nothing and expresses no indignation, and does nothing to repel the charge, that is some evidence to show that he admits the charge to be true.

In R v Cramp[16], the accused was met by a girl's father who immediately said, "I have here those things which you gave my daughter in order to procure an abortion". To this accusation the accused said nothing. It was held that the accused's failure to reply tended to corroborate the daughter's evidence. Here, the accused, if innocent may reasonably have been expected to disavow such evidence of his guilt.

The court further said that the accusations were indeed grave and called for a reply from the accused.

It must, however, be emphasised that silence can only constitute an implied admission and hence corroborate other evidence where the accusations or questions are made by someone not in authority i.e. the accused and the accuser should stand on the same footing. Consequently, silence on the part of an accused when, charged by a Police Officer cannot amount to corroboration. To say that silence after a warning from a Police Officer that the accused need not say anything, amounted to corroboration is a misdirection[17]. In R v Tate[18] the prisoner was charged by a Police Officer with the offence of Sodomy with a boy. He made no reply and was convicted. On appeal the court first observed that what was relied upon by the prosecution was the fact that the prisoner, when formally charged by the Police Constable, made no reply. It may be that in some cases the absence of an indignant repudiation of a charge might be some corroboration, but that it was not so under the circumstances of the case under consideration. Lord Alverstone C.J. said:

> "The non-denial of the offence by the prisoner, when formally charged by the Police is not corroboration. This is not to say that evidence of non-denial cannot be corroboration, in some cases the absence of an indignant denial would amount to that, but non-denial of a formal charge by the Police is not, or may not be on the same footing"[19].

It should also be noted that failure by the accused to testify does not amount to corroboration. This is because an accused person has a right to remain silent. Article 20(7) of the Constitution[20] of Zambia provides that no person who is charged for a Criminal Offence shall be compelled to give evidence at the trial. Further section 157

of the criminal procedure code[21], prohibits the prosecution from commenting on the failure of the accused to testify. Speaking of the accused's right to remain silent, Lord Mac-Dermott said:

> "The circumstances that the appellants elected not to give evidence is equally incapable of constituting corroboration, though on more general grounds. Silence on the part of an accused which is tantamount to an admission by conduct may, on occasion, amount to corroboration. But an accused admits nothing by exercising at his trial the right which the law gives him of electing not to deny the charge on oath. Silence of that kind affords no corroboration"[22].

TELLING OF LIES

False statements out of court will not necessarily constitute corroboration, but may do so if they are indicative of a sense of guilt and are proved by independent evidence. Everything depends on the circumstances of the case. In Credland v Knowler[23], a young girl deposed that the accused had committed an offence against her in his home. The accused denied the charge and said that he was not at home at the material time. But, later on he contradicted this denial by saying that he lied when he said he was not at home at the material time. It was held that the fact that the accused ultimately admitted that he had falsely stated that he was not at home at the material time was corroboration of the testimony against him.

There are four elements which have to be established before lies out of court can amount to corroboration. These elements were set out in the case of R v Lucas[24]. In this case, the appellant was charged on a count charging an offence in respect of which evidence implicating her was given by an

accomplice. The appellant gave evidence which was challenged as being partly lies. The jury were warned of the dangers of convicting on the accomplice's evidence and were directed in terms which suggested that lies told by the appellant in court be considered as corroboration of the accomplice's evidence.

The holding was to the effect that for a lying statement made out of court to be capable of amounting to corroboration it had to be deliberate and relate to a material issue, the motive for lying had to be a realisation of guilt and a fear of the truth, and the statement had to be shown to be a lie by admission or evidence from a witness who was independent and other than the accomplice to be corroborated. It was further said that lies told in court which fulfilled these four criteria were available for consideration by the jury as corroboration, but the mere fact that the jury preferred the evidence of an accomplice to that of the person charged, who therefore must have been lying in the witness box, did not enable them to treat the lying evidence as corroborative of that of the accomplice.

This is in line with the earlier decision in R v Champman[25] where Lord Roskill said:

> "There is a clear distinction in principle between a lie told out of court and evidence given in a witness box which the jury rejects as incapable of belief or as otherwise unreliable. Proof of a lie told out of court is capable of being direct evidence, admissable at the trial amounting to affirmative proof of the untruth of the defendant's denial of guilt. This in turn may tend to confirm the evidence against him and to implicate him in the offence charged. But a denial in the witness box which is untruthful or otherwise incapable of belief is not positive proof of anything.

> It leads only to the rejection of evidence given which then has to be treated as if it had never been given".

At one time it was accepted that lies in court could not at all amount to corroboration[26], but now serious doubt has been cast on this by later decisions. In R v Boardman[27], Lord Justice Orr said:

> "As to lies by the accused in court we accept the correctness of the decision in R v Chapman on the facts of that case, and that it will be applicable in most cases. Whether the judgement should be treated as authority for the proposition that a lie told by the accused in evidence can never whatever the circumstances be capable of amounting to corroboration is a matter on which to feel some doubt ....".

Serious doubt has further been cast on the decision in R v Chapman by the decision of the house of Lords in R v Lucas[28], where they set out the elements which have to be satisfied before a lie can amount to corroboration.

Further, it should be noted that a person's statement in court may well be held to corroborate the case against him. This can be illustrated by referring to the case of R v Dossi[29]. In this case a man was charged with indecent assault on a little girl. In his evidence he denied the charge , but admitted that he fondled her "platonically". It was held that the accused's admission that he fondled the girl "platonically" corroborated the girl's evidence that he had indecently assaulted her.

CONDUCT ON PREVIOUS OCCASIONS

Conduct of the accused on previous occasions may corroborate the evidence against the accused, The evidence against the accused may be corroborated if it shows a propensity which is more specific than that of committing a certain crime because it involves doing so with a particular person or in a particular way. The conduct of the accused may also corroborate a witness' story about statements made by the defendant or the accused.

In R vHartley[30], the appellant was charged and convicted of committing buggery with H, a boy aged ten years, on a certain date. The boy gave evidence of the commission of the offence on an earlier occasion. There was no corroboration of the boy's evidence regarding the date charged, but there was corroboration of his evidence regarding the earlier occasion. The judge directed the jury that they might treat the evidence corroborative of the boy's evidence relating to the date charged. It was held that the evidence of the boy relating to the earlier occasion was rightly admitted, and that the judge had correctly directed the jury on the question of corroboration.

Corroboration can also be supplied by the accused's modus operandi as was the case in Director of Public Prosecutions v Boardman[31], where the House of Lords held that the trial judge had rightly admitted the evidence as constituting mutual corroboration because of the striking similarities in the way the offences against the boys were committed. This was also the case in Director of Public Prosecutions v Kilbourne[32] where it was said that any other conduct of the accused may corroborate if it is a relevant fact on the issue of his liability on the occasion into which the court is inquiring.

In this Chapter we examined the general corroboration rule and some of the reasons advanced in favour and against the general corroboration rule. We also examined the nature and forms of corroborative evidence. In the next chapter we proceed to examine the testimony of accomplice witness.

FOOTNOTES

1. Buzzard, J.H. Phipson On Evidence 11th ed (London: Sweet and Maxwell, 1970)P874.
2. R v Baskervill [1916] 2 K.B. 658 at 667.
3. [1929] 1 K.B. 99.
4. R v Birkett (1839) 8 C & P 732
5. Heydon, J.D. Cases & Materials On Evidence, (London: Butterworths, 1975) P 69
6. Ibid.
7. Wigmore, J.H. Wigmore On Evidence, Vol VII (Boston: Little Brown & Co. 1940), P257
8. Heydon, (1975) OP. CIT.
9. Wigmore (1940) OP. CIT, P257
10. Heydon, (1975) OP. CIT, P69
11. Ibid.
12. Wigmore, (1940) OP. CIT, P257
13. Ibid.
14. Heydon, (1975) OP. CIT, P69
15. Ibid.
16. (1880) 14 Cox CC 390
17. [1929] 1 K.B. 99 at 101
18. [1908] 2 K.B. 680
19. Ibid, at 683
20. Chapter 1 of the Laws of Zambia
21. Chapter 160 of the Laws of Zambia.
22. Tumahole Bereng & others v The King [1949] A.C 253 at 270
23. (1951) 35 Cr App Rep 48

24. [1981] 1 WLR 120

25. [1973] QB 774 at 783

26. Ibid

27. [1974] 2 ALLER 958 at 963

28. R v Chapman [1973] QB 774

29. (1918) 13 Cr App Rep 158

30. [1941] 1 K.B. 5

31. [1975] A.C. 421

32. [1973] A.C. 729

CHAPTER III

THE TESTIMONY OF ACCOMPLICE WITNESSES

In the previous chapter we were dealing eith the question of corroboration in general. In this chapter we now take a look at the testimony of accomplice witnesses. We begin by looking at the definition of an accomplice and the reasons which have been advanced in favour of the rule requiring the testimony of an accomplice to be corroborated. We end by looking at the state of the law prior to 1973 in Zambia.

An accomplice is considered as a competent witness, but because of his implication in the crime and the possible motives that may play some part and influence him in giving his evidence, it is considered dangerous to act on his uncorroborated evidence. It is, however, not a requirement that his evidence should be corroborated in every detail. It is enough that sufficient corroboration of a material fact is found in his evidence. The corroboration required in the case of an accomplice is corroboration in some material particular. Such corroboration must have the character of tending to show that the accused committed the crime charged. It is not enough that the corroboration shows the witness to have told the truth in matters unconnected with the guilt of the accused[1]. It should be noted also that the corroborative evidence must be from some witness other than the person accused. This is because it is well settled law that an accomplice cannot corroborate another accomplice[2].

WHO IS AN ACCOMPLICE?

There is no formal definition of the term accomplice, but in the case of Davies v Director of Public Prosecutions[3] the following persons were held to be accomplices:-

(a) Persons who are participes criminis in respect of the actual crime charged, whether as principals or accessories before or after the fact, or persons committing, procering or aiding and abetting misdemeanour. (This was said to be the natural meaning of the term accomplice).

(b) Receivers of stolen property testifying at the trial of those alleged to have stolen the goods received by them.

(c) The parties to other crimes alleged to have been committed by the accused, when evidence of such crimes is received on the ground that it is of particular relevance or that it tends to prove something more then mere criminal propensity.

THE NEED FOR CORROBORATING ACCOMPLICE EVIDENCE:

Several reasons have been given in support of the rule requiring accomplice evidence to be corroborated. Firstly, it is said that a person may wish to suggest his innocence or the fact that his participation in the crime was minor by shifting the blame from himself on to the others. In such a way the accomplice may expect to save himself from punishment if only he could secure the conviction of others. As Lord Abinger, C.B. said:-

> "It is a rule of practice which deserves all the reverence of law that judges have uniformly told juries that they ought not to pay any respect to the testimony of an accomplice unless the accomplice is corroborated in some material particular..... The danger is that when a man is fixed, and knows that his own guilt is detected he purchases immunity by fasely accusing others"[4].

And secondly, it is said that an innocent man may testify against an accused, and in spite and in order to revenge himself, the accused may accuse the innocent man of in fact taking part in the crime. In R v Robinson[5] Pollock, C.B. said:

> "It was perilous..... to convict a person as receiver on the sole evidence of the thief. This would put in the power of a thief from malice or revenge to lay a crime on any one against whom he had a grudge".

Thirdly, it has been argued that in most cases it often happens that an accomplice is a friend of those who committed the crime with him and he would much rather get them out of the scrape and fix an innocent man than his real associates. The Fourth reason advanced in favour of the need for corroborating the evidence of an accomplice has its base in the moral guilty of the witness. This is to the effect that accomplice testimony should be treated with suspicion because the accomplice is aproved or confesed criminal. It is because of the dangers inherent in accomplice testimony that the courts insist and require that the accused must be implicated in some material particular by the corroborative evidence.

THE DECISION IN MACHOBANE v THE PEOPLE[6]:

This was the first major decision in Zambia in so far as accomplice evidence is concerned. In this case the appellant was convicted of stock theft in the High Court. The material evidence against him was given by one Julius (the appellant's brother) and Julius' twelve year old son. The two deposed that they found two strange beasts, one of which later turned out to be the property of the complainant in Julius' Kraal. When they asked about the beasts the appellant said they were his. The appellant, however, in his evidence denied any know-

ledge of the beasts and said at the time he was alleged to be in the village, he was somewhere in Livingstone. The appellant appealed against both sentence and conviction.

It was held by the Supreme Court that, a witness found in possession of stolen property must be regarded as an accomplice unless on the whole of the evidence the court finds as a fact that he is not an accomplice. The court further said in the absence of such finding the witness will nevertheless be assumed to be an accomplice in considering an appeal. On accomplice evidence the court ruled that a conviction on the uncorroborated evidence of an accomplice is competent as a strict matter of law. But the court qualified this by saying that the danger of convicting on uncorroborated accomplice evidence is a rule of practice which has virtually become equivalent to a rule of law. An accused person should therefore not be convicted on the uncorroborated testimony of a witness with a possible interest to serve unless and until there are "special and compelling grounds".

To be noted from the decision in Machobane is the fact that for the first time the court introduced a new element in accomplice evidence in Zambia. This is the requirement of special and compelling grounds before a conviction could be sustained on the uncorroborated evidence of an accomplice. The court did not, however, care to define or let alone give an example of what would have constituted special and compelling grounds in the case at hand. Further, the court made it clear that the accomplice evidence rule was to apply equally to a winess with a possible interest to save. This seems to extend beyond the definition of an accomplice as given in Davies v Director of Public Prosecutions[7]. This case ((Machobane) remained the leading authority on accomplice evidence in Zambia until later on. To this effect, in the next chapter we take a look at the present status of the law on accomplice evidence in Zambia.

FOOTNOTES

1. R v Baskerville [1916] 2 K.B 658
2. Mulenga v the people [1972] ZR 271
3. [1954] A.C. 378
4. R v Farler, 8 CeP 106
5. (1864) 4 F P F 43
6. [1972] Z R 101
7. Ibid

CHAPTER IV

ACCOMPLICE EVIDENCE IN ZAMBIA TODAY

In chapter III, we examined the testimony of accomplice witnesses, who an accomplice is, and the reasons advanced in support of the rule requiring accomplice evidence to be corroborated. We ended by looking at accomplice evidence in Zambia prior to 1973. We now proceed to examine accomplice evidence in Zambia today and also take a look at the position of the law in the United Kingdom. The author will endeavour to establish whether the Zambian Law is a departure from English Law or not.

THE DECISION IN PHIRI AND OTHERS v THE PEOPLE[1]:

The appellants were convicted of aggravated robbery. It was alleged that two of them, both wearing women's stockings over their faces and while armed, robbed a Securicor Employee of a cash box containing Cheques and a sum of money in cash. The third man was the driver of the car which was used in the robbery. The prosecution relied mainly on the evidence of two accomplices who were both employees of the firm where the robbery took place. The trial judge warned himself of the dangers of convicting on the uncorroborated evidence of the accomplices. He found as a fact that there was no corroboration or anything else to support the testimony of the accomplices, but held that from their demeanour and the fact that they gave detailed accounts of the offence he was fully convinced that they were speaking the truth.

On behalf of the appellants it was argued by counsel that a conviction on the uncorroborated evidence of an accomplice and in the absence of "special and compelling grounds" was contrary to the decision in Machobane and therefore incompetent. It was submitted by the director of Public Prosecu-

tions that the requirement of "special and compelling grounds" was a departure from settled English Law and therefore, the Machobane case should be overruled. The learned Director Public Prosecutions further submitted that a court may convict on the uncorroborated evidence of an accomplice if convinced that the accomplice is telling truth, and that the faith in the truth of the testimony may be based on nothing more than the demeanour of the witness and the plausibility of coherence of his story. Alternatively, the Director of Public Prosecutions subbmitted that contrary to the learned judge's finding there were in fact "special and compelling grounds" within the meaning of Machobane. He called for the application of the proviso to section 15(1) of the Supreme Court Act[2] of Zambia even if the judge was to be held to have misdirected himself. The proviso to section 15 is to the effect that the court may, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occured.

The holding of the Supreme Court in this case was to the effect that a judge sitting alone or with assessors must direct himself and the assessors, if any, as to the dangers of convicting on the uncorroborated evidence of an accomplice just as he would direct a jury. His judgement must show that he had done so although it is not necessary to use any particular form of words for such a direction. It is only necessary that judgement shows that the judge has applied his mind to the particular dangers raised by the nature and the facts of the particular case before him. The judge should then examine whether in the circumstances of the case those dangers have been excluded, and he must give his reasons for his conclusions. It was also said that those reasons must as a matter of strict law consist in something more than a

belief in the truth of the evidence of the accomplices based simply on their demeanour and the plausibility of their evidence, and that in the absence of "something more" the court must acquit. Referring to "special and compelling grounds", Justice Baron said:

> "The something more must be circumstances which though not constituting corroboration as a matter of strict law, yet satisfy the court that the danger that the accused is being falsely implicated has been excluded and that it is safe to rely on the evidence of the accomplice implicating the accused. This is what we mean't by special and compelling grounds as used in Machobane"[3]

Further, the court asserted that the special and compelling grounds do not lend themselves to close description, saying the nature and sufficiency of the evidence in question will depend on the nature of the facts of the particular case, but as a principle the evidence will be in the nature of corroboration in that it must of necessity confirm or support. The court laid down the test for the application of the proviso in Zambia in the following terms:-

> "Was there corroborative or supporting evidence of such weight that the conclusion is not to be resisted that any court behaving reasonably, moving from the undisputed facts and any findings made by the trial court would directing itself properly have arrived at the same conclusion?"[4]

On the facts of the case Chief Justice Silungwe, Justices Muwo and Bruce-Lyle ruled that there were "special and compelling grounds" which occured in the form of "odd

coincidences". These coincidences were:-

(i) The car in which the appellants were intercepted in Lusaka was similar and had the same registration number as the one which the appellants had allegedly been using in Ndola.

(ii) Shortly after the robbery in which Phiri was implicated he was found with K1,204, about which he failed to give a credible explanation.

(iii) It was not possible that the accomplices who stayed in Ndola could pick on three strangers two of whom stayed in Lusaka and the other in Kafue and who knew each other.

On the basis of this the three judges applied the proviso to the effect that although there were a lot of misdirections by the trial judge there was no miscarriage of justice. They therefore dismissed the appeals. But Justices Baron and Gardner were unable to find "somethin more" and allowed the appeals. Justice Baron said he did not regard the foregoing aspects of the evidence as providing any support for the evidence of the accomplices. The decision to dismiss the appeal was carried forward on the basis of the majority decision.

It should be noted that Phiri settled the law on accomplice evidence in Zambia. It should also be noted that the accomplice rule which calls for special and commpelling grounds has been extended to cover witnesses with a possible interest of their own to serve[5]. The rule also covers witnesses with a possible bias[6]. However, before we take a critical look at the position of accomplice evidence let us first of all look at the position of accomplice evidence in the United Kingdom.

ACCOMPLICE EVIDENCE IN THE UNITED KINGDOM

An accomplice, as already pointed out, is a competent witness. But his testimony may be of little cogency unless it is corroborated. It is therefore the duty of the judge to warn the jury of the dangers of acting on the uncorroborated evidence of an accomplice. In the absence of such warning the court must acquit even if in fact there be ample corroboration of the evidence of the accomplice, unless the appellate court can apply the proviso to section 4(1) of the riminal Appeal Act 1907.

In Davies v Director of Public Prosecutions[7], the accused and other youths attacked with their fists another group of youths, one of whom was stabbed and died. The six youths, including the appellant and one Lawson, were charged with murder but finally the appellant alone was convicted. Lawson was among a group of four against whom no evidence was offered and who were not guilty of murder but convicted of common assault. At the appellant's trial Lawson gave evidence for the prosecution as to an admission by the appellant of the use of a knife by him, but the judge did not warn the jury of the danger of accepting Lawson's evidence without corroboration.

It was held that in a criminal trial where a person who is an accomplice gives evidence on behalf of the prosecution it is the duty of the judge to warn the jury that although they may convict on the evidence of an accomplice it is dangerous to do so unless it is corroborated. This rule is a rule of practice which has acquired the force of a rule of law. It follows that where the judge fails to give due warning the conviction will be quashed even if in fact there be ample corroboration unless the appellate court can apply the proviso to section 4(1) of the Criminal Appeal Act 1907.

The House of Lords had also an opportunity to review the case of R v Baskerville[8] regarding the testimony of accomplices and the requirement of corroboration. Their lordships said in cases of accomplice testimony there must be independent testimony which confirms the evidence of the accomplice as to a material circumstance of the crime, It is not, however, necessary that the whole of the evidence of the accomplice should be corroborated. Their lordships further said that the corroborative evidence must exist as regards the identity of the accused in relation to the crime, and such evidence must implicate the accused. Their lordships, however, made it clear that one accomplice cannot corroborate another[9], and that the testimony of two accomplices is admissible but it cannot be treated as corroboration. This in essence means that two accomplice witnesses for the prosecution are no better than one.

English Law has also dealt with the question of whether or not corroboration is required where a witness has some purpose of his own to serve. In R v Prater[10], it was said that where a witness may have some purpose of his own to serve in giving evidence, it is desirable in practice that a warning should be given to the jury with regard to the danger of acting on his uncorroborated evidence similar to that which is given in the case of accomplices, whether the witness can properly be classified as an accomplice or not. But later decisions have made it clear that what was laid down in Prater was not a rule of law, but a rule of practice[11]. It follows that where a witness has a bias or a purpose of his own to serve the issue that arises in English Law is that of credibility and not corroboration[12].

ACCOMPLICE EVIDENCE IN ZAMBIA AND THE UNITED KINGDOM COMPARED.

A look at accomplice evidence in Zambia and accomplice evidence in the United Kingdom shows that the two differ in

two fundamental respects. First, in Zambia the Supreme Court has introduced the requirement of special and compelling grounds before a conviction can be sustained on the uncorroborated testimony of an accomplice. A look at English authorities shows that there is no corrosponding requirement of special and compelling grounds in English Law before a conviction can be based upon the uncorroborated testimony of an accomplice. Secondly, the Supreme Court in Zambia has extended the ambit of the accomplice rule such that it now covers witnesses with an interest of their own to serve, biased and tainted witnesses. It is imperative that we examine the requirement of special and compelling grounds and the extension of the accomplice rule. Let us first consider what constitutes special and compelling grounds.

SPECIAL AND COMPELLING GROUNDS

The requirement of special and compelling grounds first appeared in Machobane v the people[13] and was affirmed in Phiri and others v the people[14], which is considered to be a landmark decision in Zambia in so far as accomplice evidence is concerned. At the time that the rule was introduced in Machobane the court did not care to define or let alone give an example of what would constitute special and compelling grounds, because, as they explained later, it was unnecessary to do so. Then in Phiri the special and compelling grounds were defined to mean "something more", and, that "something more" had to be circumstances which do not constitute corroboration as a matter of strict law, but must yet satisfy the court that the danger that the accused is being falsely implicated has been excluded and that it is safe to act on the evidence of an accomplice. According to the honourable judges the demeanour and plausibility of the accomplice's story cannot suffice; there must be "something more".

It is submitted that the said "odd coincidences" could not constitute special and compelling grounds. It is either that the coincidences constituted corroboration or no corroboration at all. Corroboration, as pointed out in Phiri itself has no technical or legal meaning. It simply means confirmation, support or evidence tending to connect the accused with the commission of the crime. So if the coincidences referred to confirmed or supported the evidence of the accomplices, then the coincidences did not warrant any special designation. In DPP v Hester[15], Lord Diplock said the words corroboration and confirmation are used interchangeably. Further, Lord Hailsham said:

> "The word corroboration itself means no more than evidence tending to confirm other evidence. In my opinion evidence which is admissible and relevant to the evidence requiring corroboration, and if believed confirming it in the required particulars is capable of being corroboration of that evidence and when believed is in fact such corroboration"[16].

Nowhere is it suggested in English Authorities which have made reference to "other evidence" that the other evidence should have any special designation, apart from statements made that the other evidence must confirm, support or tend to connect the accused with the commission of the crime. Let us take a look at the courts ruling that the fact that Phiri failed to give a credible explanation of how he came to have a lot of money shortly after he was implicated in a robbery in which money was stolen constituted a special and compelling ground. It is submitted that the fact that Phiri could not account for the money found on him could only be taken to have confirmed or supported the accomplices' story that Phiri was involved in the robbery. So if the evidence

was accepted on the basis that it confirmed or supported the evidence of the accomplices, or that it tended to connect Phiri with the commission of the crime, then it assumed the character of corroboration. After all the essence of corroborative evidence is that it must confirm, support or tend to connect the accused with the commission of the crime. The difficulty of the requirement of "special and compelling grounds" is that it leads one into a situation where he has to decide which confirmatory or supporting evidence has to be treated as corroboration and which confirmatory or supporting evidence has to be treated as "something more" because it falls short of corroboration. The difficulties of this rule were apparent in Phiri itself where two judges declined to see "somethingmore" where the other three had seen the same.

It is submitted that if we have to take a less technical view as to what constitutes corroboration, then any evidence which supports or confirms or tends to connect the accused with the commisiion of the crime must be treated as corroboration. There is no need to have any special designation if only avoid the apparent difficulties of distinguishing between "something more" and corroboration when the two have almost the same features. The difficulty of this rule is further compounded by the absence of any criterion as to how one should go about looking for that "something more".

At least the courts in East Africa, unlike in Zambia, have decisively come up with a certain criterion to help them in their endeavour to find out whether the special and compelling grounds exist or not. To begin with, the courts in East Africa, unlike in Zambia, have treated the requirement of the rule as a rule of practice as opposed to a rule of law. This was the view of the court in Canisio[17]. It

was further said in the same case that the criterion as to whether an exceptional case has arisen is the credibility of the accomplice or accomplices combined with the weight to be attributed to the facts to which they testify. The principal factors to be considered when deciding whether exceptional circumstances obtain for an accomplice's evidence to be accepted without corroboration are not only their demeanour and quality as witness, but also their relation to the offence charged and the parts which they played in connection therewith, i.e. the degree of their criminal complicity in law and in fact. It was further said that a departure from the general rule of practice is only justifiable where, on applying the laid down criterion in the manner provided, it appears clearly that the accomplice evidence is so exceptionally cogent as to satisfy the court beyond reasonable doubt that the inherent danger of convicting on uncorroborated accomplice evidence has disappeared. It is noteworthy, however, that the court did not cite an example of what would have been special and compelling grounds, but from the laid down criterion at least one would know what to look for. The truth of the matter, however, is that it is not easy to set out what would constitute special and compelling grounds in any given case. It is submitted in the final analysis that the introduction of the rule requiring special and compelling grounds is untenable.

EXTENSION OF THE ACCOMPLICE RULE:

The Zambian courts have unduly extended the ambit of the accomplice rule to cover witnesses with a purpose of their own to serve, biased and tainted witnesses. The result of this is that no conviction can be sustained on the uncorroborated testimony of such witnesses in the absence of special and compelling grounds. In Musupi v the people[18], Justice Baron acknowledged the distinction between a witness with his own purpose to serve and an accomplice, and the fact that

a witness with his own purpose is not necessarily an accomplice, He, however, went on to say that this distinction is irrelevant because the question that arises in every case is whether the danger of relying on the evidence of the suspect witness has been excluded. A witness with a purpose of his own to serve or one with a bias cannot be held to be an accomplice but that his evidence is approached in the same way one would approach accomplice evidence.

It is submitted that this extension of the accomplice rule to cover witnesses with a purpose of their own to serve, and biased witnesses is also untenable. A witness with a purpose of his own to serve or one with a bias cannot be put on the same footing with an accomplice. A witness may have a bias against the accused for a variety of reasons. He may not even have played any part in the crime, and yet, for one reason or another may be biased. Let us take a hypothetical case of A,B and C. A and B plan and execute a crime which is witnessed by C. C meanwhile had fought with both A and B some two years ago. C is called as a witness for the prosecution. A and B allege that C is likely to be biased against them on account of the fight which they had with him two years ago.

Definitely in such a case it would be absurd to require that C's evidence should be corroborated by "something more" just because of a likelihood of bias. C knew nothing about the planning and execution of the crime and played no part in it. All he knows is that the crime occurred in his presence. Clearly the issue that arises in relation to C's testimony is that of credibility and not corroboration. In the English case of Beck[19], it was pointed out that there is an obligation for a trial judge to advise the jury to proceed with caution where there is material

to suggest that a witness may be tainted by an improper motive. The strength and nature of the advice will depend on particular circumstances. But there is no obligation to give an accomplice warning with all that it entails, when it is clear that there is no basis for suggesting that the witness is a participant or is in any way involved in the crime which is the subject matter of the trial. Touching on the issue of a witness with a purpose of his own to serve, Lord Justice Ackner said:

> "An accomplice direction cannot be required whenever a witness may be regarded as having some purpose of his own to serve .....merely because there is some material to justify the suggestion that a witness is giving unfavourable evidence, out of spite, ill will, to level some old score etc, cannot in every case necessitate the accomplice warning, if there is no material to suggest that the witness may be an accomplice"[20].

In other words the warning against acting on uncorroborated evidence of a witness with a purpose of his own to serve is only related to such caseswhere witnesses may be participants or involved in the crime charged. Hence in Whitaker[21], the Court of Appeal said

> "..... their duty was to decide who was telling the truth as between the applicant Whitaker and Mrs. Ogen..... They did not need any warning to the effect that Mrs. Ogden may have had a purpose to serve..... it was obvious."

It is unfortunate that the Zambian Courts seem to place greater reliance on Prater[22], which required a warning where a witness had a purpose of his own to serve. But Prater,

as the Court of Appeal said in Derek[22] laid down no rule of law, but rather a rule of practice the form of adoption of which is always a matter of discretion for the judge. It is submitted, therefore, that there is no need to require corroboration whenever a witness has a purpose of his own to serve or has a bias.

Thus, it is clear that the accomplice evidence in Zambia has departed from settled English Law in two fundamental respects, Let us then proceed in the next chapter and examine the proposals for reform.

FOOTNOTES

1. [1978] ZR 79
2. Chapter 52 of the laws of Zambia.
3. O.P. CIT, at 95
4. Ibid
5. See Machobane v the people [1972] ZR 101, Wamundila v the people [1978] ZR 151, Chipango v the people [1978] ZR 304, Chauluka v the people [1978] ZR 402.
6. Mwambona v the people [1973] ZR 28, see also Choka v the people [1978] ZR 243
7. [1954] AC 378
8. [1916] 2 K.B. 658
9. R v Ray (1909)2 Cr App Rep 327
10. [1960] 2 Q.B 464
11. Derek (1983) 77 App Rep 94. In Stannard, [1965] 2 Q.B. 1, Winn. J. doubted whether prater was a rule of practice or merely an expression of what is desirable.
12. Beck (1982) 74 Cr App Rep 221.
13. O.P. CIT
14. O.P. CIT
15. [1972] 3 ALLER 1056
16. Dpp v Kilbourne [1973] 1 ALLER 440, at 447
17. (1953) 23 E.A.C.A. 453
18. [1978] ZR 271.
19. (1982) 74 Cr App Rep 221
20. Ibid, at 227
21. [1976] 63 Cr Ap Rep 193
22. [1960] 2 Q.B. 464
23. O.P. CIT.

CHAPTER V

CONCLUSION

SUMMARY AND PROPOSALS FOR REFORM:

In this essay we have looked at the definition of corroboration and examined the general corroboration rule. We saw that corroboration must be evidence which confirms the existence of a fact in issue. We looked at some of the reasons advanced in favour and against the general corroboration rule and also examined the nature and forms of corroborative evidence. We saw that corroborative evidence may take the form of silence in the face of an accusation, non-denial of an offence when formally charged, lies in and outside court, and the conduct of the accused on previous occasions to that with which the trial is concerned. We however, later saw that whether silence, non-denial of an offence lies in and outside court will constitute corroboration generally depends on the circumstances of case, and that the failure by the accused to give evidence does not amount to corroboration.

We also examined the testimony of accomplices to the effect that an accomplice is a competent witness, but that it is considered dangerous to act on the uncorroborated evidence of an accomplice because of his implication in the crime and possible motives that may play some part and influence him in giving his evidence. We also looked at the categories of witnesses who may be considered as accomplices and looked at some of the reasons which have been advanced in favour of the rule requiring accomplice evidence to be corroborated. We considered the decision in Machobane in which for the first time the Supreme Court introduced the requirement of "special and compelling grounds" before a conviction can be sustained on the uncorroborated evidence of an accomplice.

One notable feature, however, was that the "special and compelling grounds" were neither explained nor defined in Machobane.

We then came to consider accomplice evidence in Zambia today with a critical look at the landmark decision of the Supreme Court in Phiri in which the "special and compelling grounds" were explained. It has been argued in this paper that the introduction of this rule has brought some difficulty in the law. It puts one in a difficult situation where one has to decide which confirmatory and / or supporting evidence one has to treat as corroboration and which confimatory or supporting evidence one has to treat as constituting "something more" because it falls short of corroboration. It has also been argued that the Supreme Court has provided no guidelines or criterion as to how one should go about looking for the "special and compelling grounds". We have also seen that Zambian Courts have unduly extended the ambit of the complice rule, and that this has led to the unfortunate situation where "special and compelling grounds" are required where a witness has a bias or a purpose of his own to serve. In the final analysis it has been submitted that the requirement of "special and compelling grounds" and the extension of the ambit of the accomplice rule are both untenable, and a departure from settled English Law. A comparison between accomplice evidence in the United Kingdom and Zambia shows that the two differ in two fundamental respects mentioned above.

PROPOSALS FOR REFORM:

There is no doubt that it is dangerous to act on the uncorroborated evidence of an accomplice. The court must, therefore, always keep this danger in mind whenever it is dealing with accomplice evidence. This is the reason why the court should examine the accomplice evidence with the greatest care possible.

First, the court must be satisfied that the accomplice witness is a reliable witness, just as is the case with all other witnesses. If the witness is not regarded as reliable then the matter should end there and there should be no need to look for independent evidence to support the testimony of the accomplice. But if the accomplice witness is considered reliable then independent evidence must be looked for. Where such independent corroborative evidence is not available, then the uncorroborated accomplice evidence should be subjected to all tests which caution calls for. We should consider the accomplice's demeanour in court when giving evidence and how he featured in cross-examination e.g. whether he was hesitant when answering questions. Also to be considered is the plansibility of the accomplice's story, discrepancy with previous statements, likelihood of tutoring the temptation of pardon, motive behind the accomplice testimony and the inherent improbabilities of the accomplice. If after examining all these factors the court is not satisfied with the evidence of the accomplice then the court must acquit in the absence of corroborating evidence. But if after examining the accomplice evidence with the greatest care, and in the light of the case, it appears clearly that the accomplice evidence is so exceptionally cogent as to satisfy the court beyond reasonable doubt that the inherent danger of convicting on uncorroborated evidence has disappeared, then the court must convict. And if any "special and compelling grounds" have to arise, they must arise from the consideration of the factors mentioned and any other related factors including the circumstances of the case.

In so far as the extension of the accomplice /rule is concerned, it is desirable of course, 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.

But it should be made clear that every case must be looked at in the light of its own facts. The accomplice warning should not be given merely because there is material to justify the suggestion that a witness is giving unfavourable evidence. Where there is material to suggest that a witness' evidence may be tainted by an improper motive the marning must be given. But there must also be circumstances or material to suggest that the witness may be an accomplice. The accomplice warning must only be related to such cases where witnesses may be participants or involved in the crime charged. The rule of accomplice warning in relation to biased and tainted witnesses, and those with a purpose of their own to serve must not be obligatory, but a discretionary matter for the judge. Every thing must depend on the circumstances of the case at hand, and it must be up to the judge to decide whether there is material to suggest that the witness may be an accomplice, or whether the circumstances of the case call for an accomplice warning.

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