

# A Critical Appraisal of Corroboration in the Crime of Rape in the Nigerian Legal System

Olaide Abass Gbadamosi\* and Maruf Adeniyi Nasir\*\*

## Abstract

*Obtaining justice when a woman is raped continues to generate controversy. Moreover, the corroboration requirement for prosecuting rape and other sexual offences has continued to generate heated debates leading to different approaches by various courts. While cases of rape are on the increase, successful prosecution and conviction are abysmally low. This is probably because the complainant's evidence requires corroboration by other pieces of evidence implicating the accused in a substantial way for a successful conviction. There have been demands for reform in the substantive and procedural laws that would eradicate the obstacles to proving sexual offences. Reforms that will end the prejudice against women are essential. The belief that it is more dangerous to convict in the absence of corroboration is still held sacrosanct in many jurisdictions, including Nigeria. This article critically appraises the concept of corroboration in the crime of rape and recommends the adoption of best practices existing in other jurisdictions, such as the United Kingdom, where it is no longer necessary for the judge or jury to be warned before convicting based on the uncorroborated testimony of the victim once there is credible and convincing evidence.*

## Keywords

corroboration; crime of rape; Nigeria; rape; sexual offences; testimony

## 1. Introduction

Rape is criminalised in Nigeria, as in many other jurisdictions such as South Africa and the United Kingdom. Nevertheless, it remains one of the most widespread crimes, with the majority of perpetrators enjoying impunity and the majority of women victims not reporting it.<sup>1</sup> This fact has been judicially noticed. In *Idam v FRN* Augie JSC observed that the increase in rapes in the country had become common knowledge.<sup>2</sup> The international human rights framework and international jurisprudence recognise rape as a human rights violation and as a manifestation of gender-based violence against women and girls

1 *Idam v FRN* (2020) LPELR-49564 (SC).

2 *Ibid.*

\* Professor, College of Law, Osun State University, Ifetedo Campus, Nigeria. <<https://orcid.org/0000-0002-0343-0511>> Email: olaide.gbadamosi@uniosun.edu.ng

\*\* Senior Lecturer, Acting Dean, College of Law, Osun State University, Nigeria. <<https://orcid.org/0000-0001-9713-3659>> Email: adeniyinasir@uniosun.edu.ng



that could amount to torture.<sup>3</sup> Rape is frequently not reported. If rape is reported, it is seldom prosecuted. If prosecuted, the prosecution is rarely pursued in a gender-sensitive manner, and often the accused is not convicted. Survivors are re-victimised, and attrition rates are high, resulting in the normalisation of rape, a culture of silence on rape, the stigmatisation of victims, and impunity for perpetrators.<sup>4</sup>

Rape, as a form of discrimination and gender-based violence against women, is specifically mentioned by the Committee on the Elimination of Discrimination against Women in its General Recommendation No. 19 (1992) on violence against women, in which it refers to rape as a manifestation of violence against women in the family. The Beijing Declaration and Platform for Action of 1995 recognised rape as a manifestation of violence in the family and in the community and the systematic practice of rape in conflict as a deliberate instrument of war, constituting a war crime.<sup>5</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003 specifically obligates States Parties to enact legislation to criminalise violence against women.

In addition to the definitional elements of rape as an international crime, the rules of procedure and evidence of the International Tribunal for the Former Yugoslavia contained an important set of provisions for the gender-sensitive and victim-centred prosecution of rape. Rule 96 provided that no corroboration was required of the testimony of a victim of sexual violence. It specifically excluded the admissibility of the victim's prior sexual conduct and restricted a defence based on consent, constituting significant advancements in international criminal procedural law on rape.

The Elements of Crimes of the Rome Statute contains the following definition of the crime of rape, in article 7(1)(g):

- (a) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body;
- (b) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

This definition explicitly refers to consent in its second paragraph, with respect to 'a person incapable of giving genuine consent', and the footnote to that paragraph clarifies

3 Šimonović, D 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Human Rights Council Forty-Seventh Session, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development' A/HRC/47/26 21 June–9 July 2021.

4 *Ibid.*

5 *Ibid.*

that it is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This broadens the interpretation of incapacity by including induced incapacity, as a result, for instance, of drugs or alcohol. It also includes age-related incapacity, referring to children below the age of sexual consent.<sup>6</sup>

This definition has been criticized because it only implicitly includes lack of consent, but it remains to be determined by the court whether to consider lack of consent as a key element of the definition of rape in specific cases. The court is invited to implement the provisions of the Rome Statute in accordance with human rights standards, which have also evolved and now require the inclusion of lack of consent as a central element of rape.

In contemporary Nigeria, the offence of rape is a topical matter due to the escalation in reported cases of rape. Victims of rape are sometimes blamed for being raped by members of the general public.

It is common knowledge that myths and stereotypes about rape and rape victims abound. Common cultural myths and stereotypes about rape include the belief that rape is a sex act rather than an assault, that raped women are somehow less respectable, that women lie about being raped, and the belief that women are responsible for their own victimization.<sup>7</sup>

The Nigerian Codes<sup>8</sup> define rape differently. In the Criminal Code, rape is defined as follows:

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, in the case of married woman, by personating her husband, is guilty of an offence which is called rape.<sup>9</sup>

In the Penal Code, rape is defined as follows:

A man is said to commit rape if he has sexual intercourse with a woman: (a) against her will, (b) without her consent, (c) with her consent when her consent has been obtained by putting her in fear of death or of hurt, (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes that he is another man to whom she is or believes herself to be lawfully married, (e) with or without her consent, when she is under fourteen years of age or of unsound mind.<sup>10</sup>

6 *Ibid.*

7 Stewart MW Dobbin SA & Gatowski SI 'Real Rape and Real Victims : The shared reliance on common cultural definitions of Rape' 1996(4) *Feminist Legal Studies* 160.

8 Criminal Code and Penal Code. The Criminal Code holds sway in the southern part of the country while the Penal Code applies to the northern part of Nigeria.

9 Section 357, Criminal Code Act Cap C38 Laws of the Federation of Nigeria (LFN) 2004.

10 Section 282(1), Penal Code Cap P 53, LFN 2004.

In the Indian Code, rape is defined as follows:

A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions, ie (1) against her will, (2) without her consent, (3) with her consent, when consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt, (4) with her consent, when the man knows that he is not her husband and that his consent is given because she believes that he is another man to whom she is or believed herself to be lawfully married, (5) with her consent, when, at the time of giving such consent, by reason of unsoundness mind, or intoxication or the administration by him personally or through another, of any stupefying or unwholesome substance she is unable to understand the nature and consequences of that to which she gives consent, or (6) with or without her consent, when she is under sixteen years of age.<sup>11</sup>

In the English Sexual Offences Act,<sup>12</sup> rape is defined as follows:

A person

- (a) Intentionally penetrates the vagina, anus, or mouth of another person;
- (b) with penis;
- (c) B does not consent the penetration, and
- (d) A does not reasonably believe that B consented.<sup>13</sup>

## 2. Requirements for the offence of rape

In a charge of rape, the onus of proof is on the prosecution to establish by evidence the following facts beyond a reasonable doubt:

- (1) that the accused person had intercourse with the complainant;
- (2) that the act of sexual intercourse was done without her consent or the consent was obtained by fraud, force, threat, intimidation, deceit or impersonation;
- (3) that the complainant was not the wife of the accused;
- (4) that the accused had the *mens rea*, the intention to have sexual intercourse with the complainant without her consent or that the accused acted recklessly not caring whether the prosecutrix consented or not; and
- (5) that there was penetration.<sup>14</sup>

---

11 Sections 98 and 99, Criminal Code (Amendment) Act 2003.

12 Section 1(1) of the English Sexual Offences Act 2003.

13 This definition replaces that found in the Sexual Offences Act 1956, (as amended) and section 1(1) and (2) replace section 1(2) of the Sexual Offences (Amendment) Act 1976. The principal changes are that rape can now be committed by the penetration of the mouth by the penis (sometimes called 'oral rape') and that the *mens rea* is now extended to situations where the accused had an unreasonable belief in the victim's consent.

14 *Muhammadu v The State* (2020) 17 NWLR 257.

In *Benjamin v State*,<sup>15</sup> the court stated in clear terms that the essential and most important requirement for the offence of rape is penetration and that unless penetration is proved, the prosecution must fail. The court further stated that proof of any of the requirements for the offence is enough to sustain the conviction of the accused.

### 3. Corroboration

The issue of corroboration in sexual offences has attracted a lot of scholarly discussions, and the debate continues. The debate assumed a new dimension in Nigeria when the corroboration requirement was removed from the Evidence Act 2011, a procedural law. Yet the substantive law – chapter 21 of the Code – still contains the corroboration requirement. This is probably because, by its nature, the offence of rape is not usually committed in public but in private.

In *Benjamin v State*,<sup>16</sup> Galumje JSC held that:

corroboration in a rape case is evidence which tends to show that the story of the victim, the prosecutrix, shows clearly that it is the accused that committed the crime. Such evidence need not be direct. It is, therefore, some additional evidence rendering it probable that the story of the accomplice (or complaint) is true and that it is reasonably safe to act upon it. Corroborating evidence must, therefore, be an independent piece of evidence that connects the accused to the alleged offence. It is a piece of evidence that implicates him and thus confirms in some material way that not only was an offence committed but also that the accused committed the alleged offence. It must be flawless, indubitable, credible and not discredited.<sup>17</sup>

In *Ali v State*,<sup>18</sup> the Supreme Court restated the age-long principle of law that, the prosecution is required to lead credible evidence to prove the above stated ingredients to the satisfaction of the court, in order to secure a conviction for the charge of rape. However, proof beyond reasonable doubt, is not proof beyond all doubt or all shadow of doubt; it simply means establishing the guilt of the accused person with compelling and conclusive evidence, a degree of compulsion which is consistent with a high degree of probability.

In *Kiwo v State*,<sup>19</sup> Ejembi Eko JSC stated:

The essence of corroboration is not to give validity to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and credible. What corroboration does in effect is to give support to the assertion of the prosecution. other than evidence which 'confirms' or 'supports' or 'strengthens' the evidence. It is evidence which renders other evidence more probable.

15 (2019) 15 NWLR 553.

16 *Ibid.* 553.

17 (2020) All FWLR 725.

18 (2021) 12 NWLR 170. See also *Smart v State* (2016) LPELR-40827(SC).

19 (2020) All FWLR 725.

Bargen and Fishwick<sup>20</sup> define the concept as follows: ‘Corroboration refers to the need for the complainant’s evidence to be supported by some other independent evidence implicating the accused person.’<sup>21</sup> Corroboration is an independent piece of evidence that confirms the testimony of the complainant or the evidence adduced by the prosecution. As seen from its etymology, the meaning of corroborate is ‘to strengthen’ and not ‘repeat’.<sup>22</sup>

Glanville Williams and Wigmore offer more comprehensive justifications for the corroboration requirement in sexual offence cases. In the view of Glanville Williams, corroboration should be required because sexual cases are particularly subject to the danger of deliberately false charges resulting from sexual neurosis, phantasm, jealousy, spite, or simply a girl’s refusal to admit that she consented to an act of which she is now ashamed.<sup>23</sup>

Wigmore argued for the corroboration requirement because such narrations are straightforward and convincing on the surface, and therefore the court or tribunal would be easily swayed to find in favour of the supposed victim. The requirement of corroboration, he contended, would provide a buffer for the accused who, in most cases, could easily be presumed guilty from the finessed and stoical presentation of the narrations.<sup>24</sup>

One can therefore submit that the rules relating to the corroboration requirement in sexual offences originate from the strong belief that some women tend to lie about sexual offences. This is the justification for subjecting allegations of sexual offences to serious scrutiny, such as requiring corroboration from sources independent of the victim.<sup>25</sup>

In *R v Baskerville*,<sup>26</sup> Lord Reading CJ defined what constitutes corroborating evidence for the purpose of statutory and common-law rules when he said:

We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it.

The parties in civil or criminal proceedings don’t need to call every witness and place all the documents in the case before the court. What is of essence is not the quantum of evidence but the quality and weight. Hence a court can convict upon the testimony

20 Bargen, J & Fishwick, E *Sexual Assault Law Reform: A National Perspective* (UN Office of the Status of Women May 1995).

21 *Ibid.*

22 See Lord Hewart CJ’s *dictum* in *R v Whitehead*, where the learned Law Lord stated that corroboration was not repetition.

23 Williams, G ‘Corroboration in Sexual Cases’ (1962) *Criminal Law Review* 662.

24 Kabaseke, C & Kitui, B ‘Access to Justice for Female Victims of Sexual Violence in Uganda’ in Budoo-Scholtz, A & Lubaale, EC (eds) *Violence Against Women and Criminal Justice in Africa* vol II Sustainable Development Goals Series (Palgrave Macmillan 2022).

25 Olatunji, O ‘Penetration, Corroboration and Non-Consent: Examining the Nigerian Law of Rape and Addressing its Shortcomings’ (2012) 8 *University of Ilorin Law Journal* 79, 82.

26 (1916) 2 KB 658.

of a single witness. An example is a positive, direct, voluntary and dogmatic confession. However, there are certain cases where the law demands a specified number of witnesses to sustain a conviction.<sup>27</sup>

Functionally, corroboration is essentially confirmatory or supportive evidence in the sense that it proves: (1) that a crime has been committed; and (2) that the accused is implicated in it. Corroboration shows that the witness's evidence is probably true and is reasonably safe to base conviction on. Evidence in corroboration must be independent testimony, which affects the accused by connecting or tending to connect him with the crime.<sup>28</sup>

#### 4. When corroboration is required

Generally, corroboration is not of the essence, provided that the parties are able to adduce enough evidence to warrant a verdict. However, the statute creating certain offences has demanded corroborative evidence as a precondition for a conviction. In some cases, also, the court, as a matter of practice, makes corroboration necessary.<sup>29</sup> The following are examples of instances where the law requires corroboration:

- (i) unsworn evidence of a child<sup>30</sup>
- (ii) treason<sup>31</sup>
- (iii) concealment of treason<sup>32</sup>
- (iv) treasonable felonies<sup>33</sup>
- (v) promoting inter-communal war<sup>34</sup>
- (vi) perjury<sup>35</sup>
- (vii) traffic offence of exceeding speed limit<sup>36</sup>
- (viii) sedition<sup>37</sup>

27 National Open University of Nigeria *Law of Evidence* (NOUN Abuja). <<https://nou.edu.ng/coursewarecontent/LAW%20OF%20EVIDENCE%201-.pdf>> accessed 24 August 2022.

28 See *Ikono v State* (2020) All FWLR (Pt. 1046) 922 SC.

29 National Open University of Nigeria (n 27).

30 Sections 208 and 209, Evidence Act, Cap E 14 LFN 2004.

31 Section 37, Criminal Code Act Cap C38 LFN 2004.

32 Section 40, Criminal Code Act Cap C38 LFN 2004 and section 200, Evidence Act 2011.

33 Sections 41, 42 and 200, Criminal Code and Evidence Act.

34 Section 200, Criminal Code and Evidence Act.

35 Section 202, Evidence Act: 'A person shall not be convicted of committing perjury or for counselling 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 corroborated such witness.'

36 Section 203(1), Evidence Act: 'A person charged under any road traffic legislation with driving at a speed higher than the allowed maximum shall not be convicted solely on the evidence of one witness that that witness he was driving at such speed: provided that the evidence of a duly authorized officer of the relevant authority who was at time of the commission of the of offence operating any mechanical, electronic or other device for the recording of the speed of a moving vehicle, the record of such device being additionally tendered in evidence against the defendant, shall not require further corroboration.'

37 Section 51(1)(b), Criminal Code.

- (ix) action for breach of promise for marriage<sup>38</sup>
- (x) evidence of an accomplice.<sup>39</sup>

## 5. Corroboration in rape cases

The courts have variously held that the corroboration requirement in rape cases is not an express requirement of the law. This is probably because, in proving the guilt of an accused, the quality of evidence ought to be more important than the quantity of evidence. However, the belief that the peculiar nature of women makes them prone to malice and mendacity might account for the corroboration requirement in cases of rape. Moreover, it has argued, as postulated by Smith Kiiza and observed a long time ago by Justice Salmon,<sup>40</sup> that:

[i]n cases of alleged sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. This is dangerous because human experience has shown that in these cases girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not enumerate, and sometimes for no reason at all. It must be emphasized that the evidence is sufficient even if it is circumstantial in nature so long as it connects or tends to connect the accused to the commission of the offence.<sup>41</sup>

Similarly, in *Edet Okon v The State*,<sup>42</sup> the court maintained that although corroboration is not required by law, it is considered unsafe to convict for rape based on the uncorroborated evidence of the complainant. Corroboration of the testimony of a witness must be offered by independent evidence that connects or tends to connect the accused with the offence charged.

The main gist of all the justifications is that the accused must be protected from wrongful conviction on false evidence, which may emanate from victims of sexual offences who may be perjurers.<sup>43</sup>

---

38 Section 197, Evidence Act: 'No plaintiff in any action for breach of promise of marriage shall be entitled to succeed unless his or her testimony is corroborated by some other material evidence in of such promise: and the fact that the defendant did not answer letters affirming that he had promised to marry the plaintiff is not such corroboration.'

39 Section 198(1), Evidence Act: 'An accomplice shall be a competent witness against a defendant, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice: provided that in cases when the only proof against a person charged with a criminal offence is the evidence of an accomplice, uncorroborated in any material particular implicating the defendant, the court shall direct itself that it is unsafe to convict any person upon such evidence.'

40 *Ibid.*

41 *Ogunbayo v The State* (2007) LPELR-2323 (SC). See also *Afor Lucky v State* (2016) LPELR-40541.

42 1973) 1 SC 21

43 Olatunji (n 25).

## 6. Corroboration in cases involving a child

A challenge is faced where a child has been raped, because a child can only give unsworn evidence on behalf of the prosecution. Section 209 of the Evidence Act 2011 provides as follows:

- (1) In any proceeding in which a child who has not attained the age of 14 years is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation. If in the opinion of the court he is possessed or sufficient intelligence justify the reception of his evidence and understands the duty of speaking the truth.
- (2) A child who has attained the age 14 years shall subject to sections 175 and 208 of this Act give sworn evidence in all cases.
- (3) A person shall not be liable to be convicted for an offence unless the testimony admitted by virtue of subsection (1) of this section and given on behalf of the prosecution is corroborated by some other material evidence in support of such testimony implicating the defendant.
- (4) If a child whose evidence is received under this section, willfully gives false evidence in such circumstances that he would, if the evidence had been given on oath have been guilty of perjury, he shall be guilty of an offence under section 191 of the Criminal Code and on conviction shall be dealt with accordingly.

The above provision presents a big challenge for the prosecutor and the judge in instances where a child is raped. This is because rape usually occurs in private and in the absence of any witness or third party who can testify or corroborate the evidence of the child. In most cases, the only evidence implicating the defendant is the evidence of the child.<sup>44</sup>

Thus, if the prosecutor has successfully proved the five requirements for the offence of rape on the basis of the unsworn evidence of a child, he or she would fail to secure a conviction against the defendant in the absence of any corroborating evidence.<sup>45</sup>

Also, under the Evidence Act, evidence that can be used to sustain a charge must be either direct or circumstantial. Therefore, in the majority of cases where the rapist was not caught in the act and was not subjected to medical examination, there is usually no direct or circumstantial evidence that the defendant raped the child. The implication is that the restrictive standard of corroboration imposed on the testimony of a child permits rape offenders to go unpunished and perhaps encourages rape in our society.<sup>46</sup>

Consideration should be given to allowing the unsworn testimony of one child to be used to convict the defendant, provided that the court warns itself before basing a

44 Mcpherson LLP, 'Child Rape in Nigeria, the Evidential Conundrum' <<http://mcphersonllp.com/child-rape-in-nigeria-the-evidential-conundrum/>> accessed 2 November 2021.

45 *Ibid.*

46 Olatunji (n 25).

conviction on such evidence.<sup>47</sup> For example, Bauchi State has abolished the requirement of corroboration to prove the offence of rape.<sup>48</sup>

## 7. Doing justice by abrogating the corroboration requirement

Since the purpose of requiring corroboration in sexual offences cases is to do justice, one may be naturally tempted to ask: will justice still be done to the parties, especially the accused person, in the absence of corroboration?<sup>49</sup> It is submitted that the removal of the corroboration requirement in rape cases in particular, and in sexual offence cases, in general, will not cause injustice. Rather, the abrogation will help restore justice in this area of the law, where justice is sacrificed on the altar of technicality.<sup>50</sup> In fact, applying the corroborative rules engenders injustice and has led to strong criticism. Some of this criticism has been discussed, but it is necessary to add that the abrogation of the rules will emancipate justice from the bondage it has been placed in by the application of the old corroboration rule. One argument is that abolishing the corroboration requirement will increase the risk of wrongful conviction in sexual offence cases. This is predicated upon the fact that juries are likely to be swayed by emotional sympathy for the victim.<sup>51</sup>

The odds are already stacked in favour of men accused of rape. The continuing reluctance of many victims to appear in courts, the need for corroboration, the infrequency with which the accused's record of violent or sexual offences is disclosed despite detailed disclosure of the victim's past conduct and morality, and the reluctance of judges to intervene where the cross-examination of the victim is oppressive all work to the advantage of the defendant.<sup>52</sup>

The campaign in favour of modifying the corroboration requirement is intended to apply to cases where corroboration is statutorily required and where its requirement is a product of judicial practice. The main reason for this campaign is that corroboration is more difficult to secure in rape offences than in many other crimes. For instance, in a street theft, the requirement of corroboration is easily met: the defendant is arrested with stolen goods in his possession. However, in rape cases and other sexual offences requiring corroboration, this requirement is very difficult to establish as usually there are no witnesses.<sup>53</sup> Where, in practice, corroboration is required, the court must exercise extreme caution and must warn itself.

## 8. The requirement of corroboration for rape

In *Inspector Dantalle Mohammed v Kano State*,<sup>54</sup> the court held that it is not safe to convict on the uncorroborated evidence of the complainant. After paying due attention to the

<sup>47</sup> *Ibid.*

<sup>48</sup> See section 11(2), Kidnapping, Theft of Cattle and Rape (Special Provision Law of Bauchi) 2017 which provides that 'when a court is trying the offence of rape, corroboration shall be immaterial.'

<sup>49</sup> Olatunji (n 25).

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> (2018) 13 NWLR (Pt. 1635) 25.

warning, the court may convict the accused person if it is satisfied with the truth of her evidence.

In *Upahar & Anor v State*,<sup>55</sup> the court held that it is a well-established practice in England and India that, in cases of rape, the complainant's evidence should be corroborated. Similarly, in Nigeria, a person cannot be convicted of the rape of a girl under 14 years of age upon the uncorroborated testimony of one witness.<sup>56</sup> The implication of this rule, if interpreted literally, is that there can be no conviction for any of the offences without the requisite corroborating evidence with respect to the unsworn evidence of a minor who may also, depending on the circumstances of the case, be the victim of the rape.<sup>57</sup>

The result is that the restrictive standard of corroboration imposed on the testimony of a child permits rape offenders to go unpunished and perhaps encourages the prevalence of rape in our society. Against this backdrop, the court and the legislature need to be upright on the issue of corroboration in cases of rape.<sup>58</sup>

In *Republic of Kenya v Nicholas Kipngetich Mutai*,<sup>59</sup> the court held that even though the child complainant may have been defiled, it had not been shown to the required standard of beyond reasonable doubt that the appellant perpetrated the defilement, or the indecent act charged in the alternative. For that reason, it was not safe to convict the appellant, and the doubts lingering in the court's mind had to be resolved to benefit the accused appellant.

In *R v Easton*,<sup>60</sup> the English Court of Appeal, Criminal Division, held that it is a matter for the judge's discretion what, if any, warning he considers appropriate in respect of such a witness. Whether he chooses to give a warning will depend on the circumstances of the case, the issues raised, the content and quality of the witness's evidence, and whether there is an evidential basis for suggesting that the witness's evidence may be unreliable. This point indirectly suggests that a court of law can convict on uncorroborated evidence since the court, in this case, noted the condition, which is that it needs to warn itself of such.<sup>61</sup>

It is further submitted that requiring corroboration in sexual offences may lead to hardship in cases where the only evidence available is that of the complainant. Justice cannot be said to have been done where the courts are precluded as a matter of law and as a requirement of practice from convicting an accused person solely because the complainant's evidence must be corroborated.<sup>62</sup>

In *Smart v The State*,<sup>63</sup> the Supreme Court restated the long-standing principle of law that the prosecution is required to lead credible evidence to prove the requirements to the

55 (2002) LPELR-5937 (CA).

56 Section 282, Penal Code.

57 Ife-chuckwu, E 'The Requirement of Corroboration on the Offence of Rape and other Sexual Offences: A Revisit to the Nigerian Juridical Position' <<http://www.theNigerianlawyer.com>> accessed 25 May 2022.

58 Ater, SV 'The Law on the Offence of Rape in Nigeria; Challenges and Recommendations' <<https://www.researchgate.net/publication/366877434>> accessed 20 February 2023.

59 Criminal Appeal No. 16 of 2019 (High Court of Kenya at Kabarnet).

60 (1995) 3 All ER 730.

61 *Ibid.*

62 Olatunji (n 25).

63 (2016) LPELR-40827 (SC).

satisfaction of the court, in order to secure a conviction for the charge of rape. However, proof beyond a reasonable doubt is not proof beyond all doubt or all shadow of doubt; it simply means establishing the guilt of the accused person with compelling and conclusive evidence, a degree of compulsion which is consistent with a high degree of probability.

Helen Agu has opined that:<sup>64</sup>

The corroboration rule under the common law is now widely regarded as discredited and without any scientific basis. It was therefore vital that the common law practice should be abrogated, and that the statutory provisions, which are based on the same discredited assumption, be abolished consequentially.<sup>65</sup>

Credibility assessments should be made not by assumption but by a full evaluation of the merits of the case.<sup>66</sup> It has been suggested that once this standard of proof is attained, the requirement of corroboration can only occasionally clog the wheel of justice. This view, if adopted, will help streamline the court's decisions so that the law can be certain.<sup>67</sup>

## 9. Corroboration requirements in other jurisdictions: Lessons for Nigeria

Access to justice by women and girls who are victims of sexual violence is a global issue. The need to examine other jurisdictions becomes imperative. The United Kingdom, the USA, Australia and Canada are considered based on their legal systems' perceived comprehensiveness, development and even their relationship with Nigeria. For instance, the United Kingdom was carefully chosen based on the unique factors that connect it with the Nigerian legal system and the comprehensiveness of its legislation.

### 9.1 United Kingdom

The English common-law requirement that trial judges must warn juries of the dangers of convicting on the uncorroborated evidence of accomplices and sexual complainants was finally abrogated by section 32 of the Criminal Justice and Public Order Act 1994. Before this Act, section 34(2) of the Criminal Justice Act had abolished the requirement for a warning regarding sworn evidence given by young children. The 1994 Act resulted from the recommendations of the Law Commission in its 1991 report, as endorsed by the Royal Commission on Criminal Justice.

The section provides:

Any requirement whereby at a trial on indictment it is obligatory for the court to give the jury a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is an alleged accomplice of the accused, or where the offence charged is a sexual offence, the person in respect of whom it is alleged to have committed is hereby abrogated.<sup>68</sup>

64 Agu HU 'The Requirement of Corroboration in the Prosecution of Sexual Offences in Nigeria: A Repeal or a Reform?' (2011-2012) 10 *Nigerian Juridical Review* 15.

65 Falana, F *Cases and Materials on Women's Rights Law* (Legal Text Publishing Company Ltd 2008) 47.

66 *Ibid.*

67 *Ibid.*

68 Section 32(1), Criminal Justice and Public Order Act 1994.

The corroboration requirement from section 32(1) of the Criminal Justice Act 1994 implies that judges must warn juries of the dangers of convicting on the uncorroborated evidence of the complainant in sexual cases. However, while the law remains the same in Nigeria, it has been abolished in the United Kingdom. It is recommended that this be abolished in Nigeria to allow for certainty and so that victims of rape can obtain justice.<sup>69</sup>

The requirements of corroboration set out in the Sexual Offences Act 1956 (which were closely related to the corroboration warning required for complainants in sexual offences) in relation to the offences of procuring unlawful sexual intercourse and prostitution were repealed by section 33(1) of the Criminal Justice and Public Order Act 1994.

## 9.2 United States of America

The US legal system is known to be dual in nature. While a state such as New Orleans operates in terms of civil law, many US jurisdictions follow the common-law rule. The common-law states had also adopted the rule about corroborating evidence for the offence of rape, as in Nigeria. However, the law has been repealed in all these states. Currently, the law imposes no requirement of corroboration in sexual offence cases.<sup>70</sup> The US Supreme Court's decision in *Carmell v Texas*<sup>71</sup> exemplifies this point in the area of evidential rights. The court examined the constitutionality of a Texas statute that repealed a corroboration requirement for cases of rape and sexual assault. Previously, a rape defendant could not be convicted upon the complainant's testimony if the latter was not corroborated by the complainant's prompt outcry or by evidence extraneous to the complainant. The new statute provided that the court can convict the defendant on the uncorroborated testimony of such a young complainant if it finds the testimony to be credible beyond all reasonable doubt.

## 9.3 Australia

Unlike that of Nigeria, the criminal justice system in Australia has long since dropped the corroboration requirement for sexual offences. Section 341(5) of the Evidence Act, South Australia 1929 provides that in proceedings in which a person is charged with a sexual offence, the judge is not required by any rule, law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim of the offence. Conviction is entirely based on the quality, not the evidence's quantity. Furthermore, the disparity in Nigerian law between cases of minors and non-minors does not exist in Australia.

69 Agu (n 64).

70 *Herndon v State* 2 Ala, App. 118, 56 So. 85 (1911); *People v Gump* 17 Cal. App. 2d 221, 61 P. 2d 970 (dist. Ct. App. 1936). But cf *People v Gidney* 10 Cal. 2d 138, 73 P.2d 1186 (1937); *McQueary v Peole* 48 Colo. 214, 110 P.2d 210 (1910).

71 *Carmell v Texas* 529 U.S. 513 (2000). See *Santhosh Moolya and Surendra Gowda v State of India* (2008) 4 SLR (R 686) where the Indian Supreme Court held that there is no requirement for corroboration in sexual offences.

## 9.4 Canada

The situation in Canada is the same as that of England, Australia and the USA where the law requiring corroboration has been abolished. The need to protect the victims of sexual offences and the vulnerable led to the abolition of the law requiring corroboration in rape cases. Amendments were made to the Criminal Code of Canada in 1983, which specifically abolished some rules that perpetuated bias against women. Section 274 of the Canadian Criminal Code provides that, in relation to certain sexual offences, no corroboration is required for a conviction and, further, that the judge should not instruct the jury that it is unsafe to convict in the absence of corroboration. The Criminal Justice and Public Order Act 1994 repealed the special rules of corroboration. Also, the old rule that a judge must warn a jury about the dangers of convicting a defendant on the uncorroborated evidence of an accomplice or the victim of sexual assault was abolished.

## 10. Conclusion and recommendations

The requirement of corroboration is still part of Nigerian substantive law despite the 2011 amendment of the Evidence Act, which is the procedural law. Meanwhile, cases of rape continue to increase in Nigeria. This apparent contradiction has created challenges the courts encounter when dealing with the corroboration requirement. The Nigerian laws on rape should be amended to reflect global best practices where it is no longer necessary for the judge or the jury to be warned before convicting on the victim's uncorroborated testimony once the judge has exercised his or her discretion judicially and judiciously. Considering the trend in most common-law jurisdictions, which adhere to the quality of evidence principle, the Nigerian legal system should follow suit. This position aligns with the following statement of Niki Tobi JSC:<sup>72</sup>

[I]n all practically, what evidence of corroboration is really needed in the offence of Rape? In most cases, the offence is committed in private. Although in some cases, the shout and call for assistance of the prosecutrix attract the public, that is not a regular phenomenon. After all, the prosecutrix herself may not like to be seen by the public when the act of rape is committed. She would rather prefer reporting the rape after the act. And so, it is difficult to secure corroboration of evidence of an eye witness.

The current position needs to be removed so that victims of rape and other sexual offences have access to justice.

The following recommendations are therefore made:

1. The substantive law should be aligned with the procedural law by amending it in the same way as the Evidence Act 2011 amended the procedural law.
2. The Criminal Code, which is the substantive law for the southern part of Nigeria, should be amended and drafted in such a manner that it is aligned with the wording of the Penal Code (the substantive law for northern Nigeria) where corroboration is unnecessary.

---

72 See *Ogunbayo v. The State* [2007] All FWLR (Pt. 365) 408.

3. Judicial activism by the court is encouraged in handling cases of rape, particularly when it is obvious that the corroboration requirement in a rape case may lead to hardship if the only available evidence is that of the victim. Corroboration is, therefore, unnecessary if the evidence is credible and direct.
4. Justice should not be sacrificed on the altar of technicality.
5. Nigeria copied the corroboration requirement from section 32(1) of England's Criminal Justice Act 1994. England has abolished all laws on corroboration for sexual offences. It is therefore recommended that Nigeria should adopt the current English model.

**How to cite:**

Gbadamosi, OA & Nasir, MA 'A Critical Appraisal of Corroboration in the Crime of Rape in the Nigerian Legal System' (2022) 2(2) *Turf Law Journal* 15-29